

Cabinet Reorganization

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Summary of Report

Article IV of the State Constitution establishes the executive branch of state government and provides that the “. . . supreme executive power shall be vested in a governor.” Nevertheless, the State Constitution requires the Governor to share some executive powers with six elected cabinet officers:

- ▶ The Attorney General
- ▶ The Commissioner of Agriculture
- ▶ The Commissioner of Education
- ▶ The Comptroller
- ▶ The Secretary of State
- ▶ The Treasurer

In addition to constitutional responsibilities, the Legislature has designated each cabinet member as a department head with statutory duties. Cabinet officers also share powers and duties when sitting as the Governor and Cabinet. When in this form, the Governor and Cabinet may constitute a department head or a board. This collegial form of state government is unique to Florida.

The future configuration of the Cabinet was altered in November of 1998, by the adoption of Constitutional Amendment No. 8. The amendment, which passed by a margin of 55.5% to 44.5%, modifies the Cabinet in the year 2003 by merging two cabinet positions and by eliminating two others. Specifically, the offices of the Treasurer and the Comptroller will be merged into one Chief Financial Officer. The amendment also removes the Secretary of State from the Cabinet, but still refers to undefined *custodian of state records* who will perform limited constitutional recordkeeping duties. Additionally, the amendment removes the Commissioner of Education from the Cabinet, but still provides for a commissioner who will be appointed by a seven-member State Board of Education. Under the amendment, members of the State Board of Education will be appointed by the Governor and confirmed by the Senate. As a result of these modifications, the new state Cabinet will consist of an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer.

Probably the most significant issue before the Legislature resulting from cabinet reorganization is the future status and jurisdiction of four departments that are headed by individual cabinet officers. The Legislature must consider the future of:

- ▶ The Department of Banking and Finance
- ▶ The Department of Education
- ▶ The Department of Insurance
- ▶ The Department of State

The Legislature has a high level of flexibility to modify state government within constitutional limitations. For example, the Legislature may not create an unlimited number of departments as only 25 departments are permitted, exclusive of those authorized or provided for in the State Constitution. Further, the State Constitution limits the available options for department heads to specific elected officers, either individually or collegially, or to appointed officers, either individually or collegially.

CURRENTLY AUTHORIZED DEPARTMENT HEADS			
Constitutional		Statutory	
Elected Officer	Elected Collegial Body	Appointed Officer	Appointed Collegial Body
<ul style="list-style-type: none"> - Governor - Lt. Governor - Attorney General - Commissioner of Agriculture - Commissioner of Education - Comptroller - Secretary of State - Treasurer 	The Governor and Cabinet	Secretary appointed by the Governor	Board whose members are appointed by the Governor

Chief Financial Officer

The amendment merges the constitutional functions of Comptroller and Treasurer into a new Chief Financial Officer (CFO). As the Comptroller heads the Department of Banking and Finance (DBF) and as the Treasurer heads the Department of Insurance (DOI), the status of these departments must be determined. The options identified in the report include:

CHIEF FINANCIAL OFFICER	
OPTION NUMBER	DESCRIPTION OF OPTION
Option 1.A.	Merging the Department of Banking and Finance with the Department of Insurance and designating the Chief Financial Officer as the head of the merged department.
Option 1.B.	Merging the Department of Banking and Finance with the Department of Insurance and designating an officer or board <i>other than</i> the Chief Financial Officer as the agency head. Assigning no additional statutory duties to the Chief Financial Officer.
Option 2.A.	Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating an officer or board <i>other than</i> the Chief Financial Officer as the head of each department. Assigning no additional statutory duties to the Chief Financial Officer.
Option 2.B.	Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating the Chief Financial Officer as the head of only one department. Designating another officer or board as the agency head for the remaining department.

A number of policy issues affect the identified options. Specifically, should the statutory functions of the DBF and the DOI be merged? Should the CFO be assigned statutory responsibilities in addition to constitutional duties? What type of department head or heads would be best? Further, under each option, the Legislature may wish to consider whether regulatory responsibilities within each industry should be realigned. For example, should an independent commission or commissions be created to perform limited functions, such as rate hearings, while retaining other executive functions, such as enforcement, in one or more departments? These issues are reviewed below.

Combined or Multiple Departments - The Legislature must decide whether the regulatory functions of the DBF and the DOI should be merged or kept in separate agencies. At least 13 states place regulatory responsibility for banking, securities, and insurance in a single department. Eight states have departments that regulate banking and securities. Three states delegate banking and insurance regulation to a single department.

One consideration affecting this decision is how a merged department would compare with other departments. A review of existing departments shows that if the DBF and DOI were merged, without changing the number of employees or amounts appropriated, 15 departments would have larger appropriations and 10 would have a larger number of employees. As a result, a merged DBF and DOI would be in the mid-range of departments based upon size.

Another issue for legislative review is the compatibility of regulation in the two departments. Banking is regulated primarily at the federal level and insurance is regulated at the state level. Problems that might arise due to a difference in type of regulation probably can be resolved by organizational structure. Typically, departments have distinct divisions, each with primary responsibility over specific regulatory functions. If additional protections are considered necessary, the Legislature could create separate, independent commissions with responsibility over limited regulatory functions. For example, an insurance commission could be created and given responsibility for rate hearings, licensure hearings, or rulemaking. Enforcement responsibility could be maintained in a division of a department.

Both the Comptroller and Treasurer testified before the Senate Committee on Governmental Oversight and Productivity in February of 1999, in favor of merger. The primary basis for this recommendation was that the traditional legal walls separating insurance, banking, securities, and other financial services were being eliminated and that an agency with jurisdiction over all these services would be more effective and efficient. This testimony is supported by legislation passed during the 1999 session, as well as current events. Chapter 99-388, Laws of Florida, repealed the anti-affiliation law which prohibited licensed insurance agents from engaging in insurance agency activities through a financial institution except in the case of a bank located in a city with a population of less than 5,000. Further, the Gramm-Leach Bliley Act of 1999, authorizes banks, brokerages, and insurers to merge and to override state laws that conflict with federal affiliation provisions. As a result, merger of these regulatory functions in one department appears logical.

Type of Department Head - The Legislature also must determine what type of department head or heads it prefers. In testimony before the Senate Committee on Governmental Oversight and Productivity, the Comptroller recommended that the head of a combined department should be an officer or board appointed by the Governor, but the Treasurer recommended that the department head be elected. Currently, 12 states have elected insurance commissioners and 38 have appointed insurance commissioners.

As noted previously, the State Constitution limits the available choices of department heads. Under Amendment No. 8, there will be fewer options in 2003:

AUTHORIZED DEPARTMENT HEADS IN 2003			
Constitutional		Statutory	
Officer	Collegial Body	Officer	Collegial Body
<ul style="list-style-type: none"> - Governor - Lt. Governor - Attorney General - Chief Financial Officer - Commissioner of Agriculture 	The Governor and Cabinet	Secretary appointed by the Governor	Board whose members are appointed by the Governor

Designating an appointed officer or board as a department head would consolidate more authority, as well as accountability, in the Governor. It would also permit the Legislature to establish qualifications for appointees. In the case of a board, the Legislature could ensure that at least one board member was knowledgeable about an industry regulated by a merged department.

One reason for the Comptroller's testimony in favor of an appointed head is that an appointee may be less susceptible to influence by regulated industries because they do not need campaign contributions. Campaign contributions for the election of the Comptroller and Treasurer, however, are regulated by Florida law. A financial institution or insurer, officer or affiliate, or committee of continuous existence representing their interests, may not make a contribution in excess of \$100 for any election for the Comptroller or Treasurer. While the Treasurer did not dispute that an elected official could be influenced by industry through campaign contributions, he emphasized that an elected official has the mandate of the electorate and, as a result, can protect the public in ways that a mere appointee might not. The Treasurer also noted that appointees are not immune from influence by regulated industries because they often come from, and return to, the industries they regulate.

Designation of an appointee would bifurcate the constitutional duties of the CFO from the statutory duties of the current Comptroller and Treasurer. As a result, there would be one cabinet member who would not be designated as head of a department with related statutory duties. This would conflict not only with historical precedent which designates cabinet officers as department heads, but with constitutional and legislative policy to merge state functions into a limited number of departments to promote efficiency.

Instead of an appointed officer or board, the Legislature could designate the Governor and Cabinet, the Governor, the Lieutenant Governor, or an elected cabinet officer as a department head. Such a designation would affect the ability of the Legislature to specify the qualifications for the statutory office because

the State Constitution, not the Legislature, establishes the qualifications for these officers. The only cabinet officer required by the State Constitution to have professional qualifications is the Attorney General. As a result, it does not appear that the Legislature could require one of these officers to have a particular license or level of professional experience. It should be noted, however, that the Legislature has not established qualifications for most statutory officers who head departments.

Designating the Governor and Cabinet as department head might be an effective method for governing the large number of regulated entities in a merged department, but it could be argued that it would disperse accountability. Additionally, designating the Governor and Cabinet as head of a merged agency would bifurcate constitutional and statutory duties as the constitutional duties of the CFO cannot be reassigned by the Legislature. Further, assigning the Governor and Cabinet as agency head of a merged department would leave only one member of the Cabinet, the CFO, without a department with statutory duties related to his or her functions.

The elected officials specified in the State Constitution that may be designated as department heads are limited. The Governor has not been designated the head of an entity called a *department*, but has been designated the head of a statutorily-created office that arguably may be a department. Given this assignment, as well as other constitutional duties, naming the Governor as department head might be too burdensome. The Lieutenant Governor, historically, has not been designated by the Legislature as a department head, though a few Lieutenant Governors have been temporarily assigned this responsibility. It could be argued that the Lieutenant Governor might have more flexibility for such an assignment, and that the designation would fix as much accountability in the Governor as would an appointed secretary. The Attorney General and the Commissioner of Agriculture already head departments closely-aligned with their constitutional duties. Thus, they do not appear to be strong choices to designate as head of a new department relating to financial affairs and insurance.

As a result, under the limited options available under the State Constitution, the remaining elected officer for consideration of a combined department is the CFO. Given that the constitutional duties of the Comptroller and Treasurer are merged by the State Constitution, the merger of their statutory duties and responsibilities would be consistent, especially in light of changes that are occurring in the industry.

Commissioner of Education

The amendment removes the elected Commissioner of Education from the Cabinet in 2003, but provides for the appointment of a Commissioner of Education by the State Board of Education. The composition of the State Board of Education is modified, as well. While the State Board of Education currently consists of the Governor and Cabinet, the future board will consist of seven members appointed by the Governor and confirmed by the Senate.

Two options relating to the educational governance system have been identified for legislative consideration. The first is to designate the State Board of Education as the head of the Department of Education. The second is to limit the jurisdiction of the State Board of Education to K-12 and designate another agency head. The type of authority and the level of autonomy each of the various educational boards has could be considered and modified under either option.

EDUCATION	
OPTION NUMBER	DESCRIPTION OF OPTION
Option 1.	Designate the State Board of Education as the head of the Department of Education and provide that the Commissioner of Education is the executive director of the department.
Option 2.	Designate the State Board of Education as the head of a division of K-12 only and provide that the Commissioner of Education is the executive director of the division.

Education Option 1. As a board of gubernatorial appointees, the State Board of Education is a viable option for head of the Department of Education. On the other hand, the future Commissioner of Education does not appear to be an authorized choice as the position will be appointed by a board and not the Governor. The commissioner could serve as the executive director of the department, however.

Under the amendment, the State Board of Education will have jurisdiction over the system of *free* public education as provided by law. The addition of the word *free* does not appear to limit the ability of the Legislature to delegate broader jurisdiction to the board, however, as the State Constitution still provides that the jurisdiction of the board is *as provided by law*.

There are some issues that the Legislature may want to consider which might affect this choice. Specifically, as the State Board of Education is created by the State Constitution, the ability of the Legislature to establish member qualifications may be questioned. The Florida Supreme Court has held that where the State Constitution specifies qualifications for a constitutional office, the Legislature may not add or otherwise change these requirements unless expressly or impliedly authorized to do so by the State Constitution. What is less

clear from precedent is whether the Legislature may specify qualifications for a constitutional office when the State Constitution is silent on the issue.

The amendment does not establish member qualifications, but neither does it contain explicit language authorizing the Legislature to establish qualifications. Further, the amendment does not provide that members are to be chosen *as is provided by law*, which would provide the Legislature with some leeway. Implied authority to establish qualifications could be inferred by the lack of stated qualifications in the State Constitution, coupled with the ability of the Legislature to determine the jurisdiction and duties of the State Board of Education. On the other hand, it could be argued that, as the amendment provides only for gubernatorial appointment and Senate confirmation, the Legislature is limited to confirmation. Given these circumstances, the ability of the Legislature to establish qualifications for members of the future board is uncertain. A similar question is raised regarding the establishment of qualifications for the future Commissioner of Education, as well as the ability of the Legislature to confirm the appointee.

Education Option 2. In the alternative, the Legislature could limit the jurisdiction of the State Board of Education to K-12, much as the Board of Community Colleges and the Board of Regents are limited to specific jurisdictional areas. Where each board has only limited jurisdiction, however, no entity has administrative oversight or responsibility for coordinating the education system as a whole. As a result, under this option, an officer or board with oversight over the boards should be designated. Further, what level of authority this officer or board should have over the boards should be determined. Given the current structure of the department, that is, where some divisions are headed by boards and not the department head, the Legislature could designate a department head consisting of gubernatorial appointees selected from the State Board of Education, the State Board of Community Colleges, and the Board of Regents. The members of all of these boards are already, or will be, gubernatorial appointees who are confirmed by the Senate.

Under either Option 1. or Option 2., the Legislature could review whether to strengthen the authority of the department head by limiting the authority of the divisions in the Department of Education that are headed by boards. Specifically, the Division of Community Colleges is not headed by the department head but by the Board of Community Colleges. Likewise, the Division of Universities is headed by the Board of Regents. While the current department head sits on both boards, the arrangement limits the authority of the department head over large portions of the public educational system, and disperses accountability. The Legislature has broad discretion under the State Constitution to establish the type of authority that each board is to have. As a result, the Legislature could create a

stronger department head and narrowly define the authority of the State Board of Education, and the other statutory boards of the department, if desirable.

Secretary of State

The amendment will remove the Secretary of State from the Cabinet and will create a new undefined *custodian of state records*. Not all of the constitutional recordkeeping duties of the former Secretary of State are transferred to the new custodian, however, as language requiring the secretary to keep the records of the official acts of the legislative and executive departments was stricken. A number of specific documents still must be filed with the custodian under the amended constitution, however. As a result, the Legislature must determine the location where the official acts of the legislative and executive departments must be filed. Two options regarding the Department of State (DOS) present themselves for legislative consideration:

DEPARTMENT OF STATE	
OPTION NUMBER	DESCRIPTION OF OPTION
Option 1.	Maintain status quo. Designate the head of the Department of State as a secretary appointed by the Governor. In the alternative, designate the Lieutenant Governor as the department head. Name the head of the department as the custodian of state records.
Option 2.	Dismantle the Department of State and redistribute its programs to other units of state government.

State Option 1. The first option is to maintain the status quo, except for cabinet functions. If the Legislature maintains the department, it must designate an agency head. While the Legislature is not prohibited from creating a statewide elected officer, the State Constitution does not authorize such an elected official to head a department. As noted previously, the choices available to the Legislature to head a department include the Governor, the Lieutenant Governor, a cabinet officer, the Governor and Cabinet, or an officer or board appointed by the Governor.

The standard choice for an agency head in the executive branch is an officer appointed by the Governor. Such an officer could still be assigned the title of the “Secretary of State.” Alternatively, though not a traditional choice, the Lieutenant Governor could be designated as the department head. Some important functions of the Department of State and the Executive Office of the Governor (EOG), such as notaries and international trade, overlap. Given the importance of trade to the state, designation of the Lieutenant Governor as department head could bring added prestige to the position. The department

head, whether a gubernatorial appointee or the Lieutenant Governor, could also be designated as the custodian of state records.

Under this option, the basic form of the Department of State, as well as the functions assigned to the department, could be maintained. Maintenance of the current structure of the department was adopted by the Senate in the Committee Substitute for Senate Bill 2142 during the 1999 legislative session, with one modification. The bill transferred the Division of Licensing, minus the games promotions program, to the Department of Business and Professional Regulation. The games promotions program was transferred to the Department of Agriculture and Consumer Services. These programs, as well as others, could still be transferred under Option 1.

There are a number of reasons supporting Option 1. Florida has had a Secretary of State in some form since the 1838 charter. While an appointed head of the department would not be the equivalent of a Cabinet office, maintenance of the position would provide for continuity of some of the duties of that office. Additionally, the position is a standard office in 47 of the 50 states. Additionally, based upon the location of certain functions within the office of the secretary of state in most other states, certain duties are typically considered to fall within the functions of that office. Further, the current Secretary of State, as well as departmental staff, have testified that officials of foreign governments recognize the title *Secretary of State* and, as a result, it is easier for the department to establish cultural exchanges and foster a more favorable business climate.

It could be argued that one of the strongest reasons for leaving records custodian functions, historical and cultural resource responsibilities, notaries, commercial registrations, and others in the DOS is that there is a longstanding structure in place for the performance of these functions. No new positions, offices, or divisions would need to be created in, or transferred to, another governmental entity if the DOS were continued. Given the potential for dramatic structural changes to government in Florida in the wake of cabinet reorganization, departmental stability could be considered a high priority.

State Option 2. In the alternative, the Legislature could completely dismantle the DOS. Many of the functions currently housed in the department could be transferred to other departments or the EOG. This option would require the Legislature to reconsider the placement of many programs.

Specifically, under Option 2., it would be necessary to designate a custodian of state records and determine where this function should be housed. One option would be to designate the State Librarian as the custodian of state records and assign the State Library to the Department of Education. Regulatory functions that are currently housed in the Office of the Secretary of the Division of

Administration could be placed in the EOG. For example, responsibilities related to trade, protocol, and some aspects of cultural affairs could also be placed within the EOG.

Functions within the Division of Elections also could be redistributed. The Florida Elections Commission is currently housed as an independent entity within the Department of Legal Affairs. Elections responsibilities could be placed within that department or be merged into the Commission. The Division of Elections is also responsible for publication of the Florida Administrative Weekly and the Florida Administrative Code. This responsibility could be placed within the Division of Administrative Hearings.

Further, some or all functions of the Division of Historical Resources and the Division of Cultural Affairs could be placed within the Department of Community Affairs, the Department of Environmental Protection, or the EOG. Functions of the Division of Corporations and the Division of Licensing could be placed in the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services.

While dismantling the Department of State and reassigning all of its programs to other agencies is possible, it would require a significant restructuring of state governmental programs and agencies and could be disruptive. Further, the need for a wide scale reorganization has not been established. As a result, the Legislature may prefer to maintain the department, but review programs within the department on an individual basis to determine if transfer is appropriate.

In conclusion, the adoption of Constitutional Amendment No. 8 presents the Legislature with the opportunity to significantly reshape state government. The Legislature has a great deal of discretion, within constitutional limitations, to decide how to restructure state government as a result of changes to the Cabinet. While numerous options are available for legislative consideration, the focus of this report is on issues that *must* be resolved as a result of the amendment, and not on changes that *may* be desirable for other reasons.

A Short History of the State Cabinet System

According to historian Dr. Daisy Parker Flory, the proponents of Florida's statehood called a constitutional convention in 1838 at which

... the Jacksonians prevailed at the convention and the first constitution of Florida produced the pattern for executive-legislative distribution of powers followed to the present day.¹

Florida's first State Constitution, which went into effect upon Florida's admission to the union in 1845, provided that the offices of the Attorney General, Secretary of State, Treasurer, and Comptroller were to be elected by a joint vote of the houses of the Legislature. In 1865, another constitutional convention adopted a constitution that removed the authority of the Legislature to elect these officers and placed this power in the hands of the electorate. Although the 1865 Constitution was not ratified due to reconstruction following the Civil War, this Constitution established the principle for the popular election of the cabinet officers.

The Constitution of 1868 was the first State Constitution to refer to the aforementioned officials as "a cabinet of administrative officers." The 1868 Constitution, however, eliminated the popular election of cabinet officers, replacing it instead with gubernatorial appointees who were confirmed by the Senate. This reconstruction constitution was ratified and served until it was replaced in 1885. The 1885 Constitution, which served until 1968, reestablished the popular election of "administrative officers," which included a superintendent of public instruction and a commissioner of agriculture. The Constitution of 1968² continued the popular election of cabinet officers and established a Cabinet comprised of six officials.³ Currently, Florida's six elected cabinet officers are the:

- ▶ Secretary of State,
- ▶ Attorney General,
- ▶ Comptroller,
- ▶ Treasurer,
- ▶ Commissioner of Agriculture, and the
- ▶ Commissioner of Education.

The constitutional qualifications for cabinet members are limited. A cabinet member must be an elector not less than thirty years of age who has resided in the state for the preceding seven years.⁴ Only the Attorney General must meet professional qualifications related to his or her office. The attorney general must have been a member of the Florida Bar for the preceding five years.⁵

¹D. Parker Flory, *Florida Cabinet System of the Executive* (Univ. of Virginia 1959).

²The 1968 Constitution was revised in 1995 and in 1998.

³Article IV, s. 4 of the State Constitution and s. 20.03(1), F.S.

⁴Article IV, s. 5(b) of the State Constitution.

⁵Article IV, s. 5(b) of the State Constitution.

Cabinet officers must reside in⁶ and maintain their offices in Tallahassee, Florida.⁷ Pursuant to law, a cabinet officer may not be absent from the state for a period of 60 consecutive days or more without the consent of the Governor and a majority of the Cabinet.⁸ If a Cabinet officer refuses or fails to comply with the requirements of the section, his or her office may be deemed vacant.⁹

Governor and Cabinet as Department Head

While Art. IV, s. 1 of the State Constitution, provides that the “. . . supreme executive power shall be vested in a governor. . . ”¹⁰ the effect of providing for a Cabinet made up of elected officers is to disperse the executive power. Unlike most chief executives, Florida’s Governor may not choose his or her own cabinet or select an agency head for a number of executive agencies. Instead, various cabinet officers head departments or the Governor and Cabinet sit as the head of various boards, commissions, and departments.¹¹ This collegial form of state government is unique to Florida.¹²

⁶Sections 14.01, 15.01, 16.01, 17.02, 18.03, and 19.23, F.S.

⁷Article II, s. 2 of the State Constitution.

⁸Section 114.03, F.S.

⁹Section 114.01, F.S.

¹⁰Article IV, s. 1 of the State Constitution.

¹¹Florida’s cabinet system has a long history of criticism. In 1943, the Joint Economy and Efficiency Committee of the Florida Legislature compiled a report that was highly critical of the system, which stated: “The Governor, charged by the Constitution as Florida’s chief executive, has no direct authority over the Cabinet or the activities in the several departments headed by these cabinet members. Only through his prestige, personality and party leadership can the Governor assume the responsibility vested in him by the Constitution but also denied him by that same instrument in providing for the election of cabinet officials.” *Florida’s State Governmental Structure - Report of the Special Joint Economy and Efficiency Committee of the Florida Legislature of 1943, Part I* (Pub. Admin. Clearing Serv. of the Univ. of Fla., ed., 1950). A number of law review commentaries have also criticized the system. For example, see, Joseph W. Landers, Jr., *The Myth of the Cabinet System: The Need to Restructure Florida’s Executive Branch*, 19 Fla. St. L. Rev. 1089 (1992); and Stephen T. Maher, *The Florida Cabinet: Is it Time for Remodeling?* 18 Nova L. Rev. 1123 (1994). Nevertheless, public support for the Cabinet has been strong historically. The voters rejected the recommendation of the 1978 Constitution Revision Commission that the Cabinet be eliminated in 1978. Additionally, in the 1998 amendment to the Constitution which eliminated two cabinet officers and merged two others, dispersal of the executive power was continued by providing that the Florida Department of Law Enforcement *must* be headed by the Governor and Cabinet.

¹²Although Florida is unique among the states in its type of cabinet system, in which elected officials sit collegially to exercise powers equal to those of the Governor in formulating certain policies, states generally elect other statewide officers in addition to their respective governors. The offices of secretary of state, attorney general, and treasurer are elected in

The four departments headed by the Governor and Cabinet are: (1) the Florida Department of Law Enforcement; (2) the Department of Veterans' Affairs; (3) the Department of Highway Safety and Motor Vehicles; and (4) the Department of Revenue. There are statutory differences in the organizational structure of these departments and in the manner in which executive directors¹³ are chosen.

The Florida Department of Law Enforcement

The Legislature created the Florida Department of Law Enforcement (FDLE) in s. 20.201, F.S., and provided that the Governor and Cabinet sit as the head of the agency. The executive director of FDLE is appointed by the Governor with the approval of three members of the Cabinet, subject to confirmation by the Senate, and serves at the pleasure of the Governor and Cabinet. Pursuant to s. 943.03, F.S., the executive director of FDLE must have served at least 5 years as a police executive or possess training and experience in police affairs or public administration and be a bona fide resident of Florida. Section 20.201, F.S., authorizes FDLE's executive director to establish a command, operational, and administrative services structure to assist, manage, and support the department in operating programs and delivering services.

Three programs are established in the Department of Law Enforcement: (1) Criminal Justice Investigations and Forensic Science Program; (2) Criminal Justice Information Program; and (3) Criminal Justice Professionalism Program. General powers and duties of the FDLE are delegated in s. 943.03, F.S.

The Department of Veterans' Affairs

Article IV, s. 11 of the State Constitution, provides

The legislature, by general law, may provide for the establishment of the Department of Veterans' Affairs.

approximately 39 states. The office of comptroller is elected in 15 states, although no state other than Florida elects its banking regulator. State officer equivalents to the commissioner of education and commissioner of agriculture are elected in 14 states and 13 states, respectively. Generally, the elections of these officers are required in state constitutions; however, in some cases the elections are established by state law. As well, many states have a "cabinet"; however, such cabinets are established in a manner similar to the federal system, in which the state's chief executive officer, the governor, appoints a body of advisors." *A Review of SS. 20.02-20.05 and 20.06, F.S., Relating to the Organizational Structure of the Executive Branch of State Government* by Staff of the Senate Committee on Governmental Operations, Sen. Robert T. Harden, Chairman at p. 33 (January 1993).

¹³Section 20.03(6), F.S., defines *executive director* to mean the chief administrative employee or officer of a department headed by a board or the Governor and Cabinet.

The Legislature created the Department of Veterans' Affairs in 1988 and appointed the Governor and Cabinet as the agency head.¹⁴ Like the executive director of the FDLE, the executive director of the Department of Veterans' Affairs is appointed by the Governor with the approval of three members of the Cabinet, confirmed by the Senate, and serves at the pleasure of the Governor and Cabinet. No qualifications are established for the executive director in law.

Section 20.37(2), F.S., establishes the following divisions and bureaus within these departmental divisions:

1. Division of Administration and Public Information.
 - A. Bureau of Information and Research.
2. Division of Veterans' Benefits and Assistance.
 - A. Bureau of Veteran Claims Services.
 - B. Bureau of Veteran Field Services.
 - C. Bureau of State Approving for Veterans and Training.

General duties of the department are provided in s. 292.05, F.S. The department is required to provide assistance to all former, present, and future members of the Armed Forces of the United States and their dependents in preparing claims for and securing compensation, hospitalization, vocational training, and other benefits or privileges to which they are entitled under state or federal law by reason of their service in the Armed Forces of the United States.

The Department of Highway Safety and Motor Vehicles

Section 20.24, F.S., establishes a Department of Highway Safety and Motor Vehicles and designates the Governor and Cabinet as the agency head. Three divisions and one bureau are created in the department:

1. Division of the Florida Highway Patrol.
2. Division of Driver Licenses.
3. Division of Motor Vehicles.
 - A. Bureau of Motor Vehicle Inspection.

Unlike the Department of Veterans' Affairs and the Department of Law Enforcement, however, there is no specific grant of authority to the agency head to appoint an executive director nor is there a requirement that the executive director be appointed with the approval of three members of the Cabinet and subject to confirmation by the Senate. There is, however, general statutory authority for a board that heads a department, including the Governor and

¹⁴Section 20.37, F.S.

Cabinet, to appoint a director under s. 20.05(1)(g), F.S. Qualifications for the executive director are not established.

The Department of Revenue

The Department of Revenue is created by s. 20.21, F.S. Under subsection (1) of the section, the Governor and Cabinet are the head of the department. Like the Department of Highway Safety and Motor Vehicles, this section does not specifically provide that the department may employ an executive director nor does it require Senate confirmation of that executive director. As noted above, s. 20.05(1)(g), F.S., permits an agency headed by a board to employ an executive director who serves at the pleasure of the board. As is the case for the executive director of the Department of Highway Safety and Motor Vehicles, qualifications for the executive director are not established.

EXECUTIVE DIRECTORS OF DEPARTMENTS HEADED BY GOVERNOR AND CABINET				
Department	Specific authority to employ executive director?	Qualifications established for executive director?	Manner of appointment or employment of executive director.	Confirmation of executive director by Senate?
Law Enforcement	Yes, specific authority to appoint.	Yes. Five years as police executive or possess specific training and experience. Bona fide resident of Florida.	Appointed by Governor with approval of 3 members of the Cabinet.	Yes, confirmed by the Senate.
Veterans' Affairs	Yes, specific authority to appoint.	No.	Appointed by Governor with approval of 3 members of the Cabinet.	Yes, confirmed by the Senate.
Highway Safety & Motor Vehicles	No specific authority to appoint. General authority to employ executive director found in s. 20.05(1)(g), F.S.	No.	None stated.	No.

Revenue	No specific authority to appoint. General authority to employ executive director found in s. 20.05(1)(g), F.S.	No.	None stated.	No.
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Thus, in those instances where the Legislature has delegated specific authority to appoint an executive director, it has required approval of at least 3 members of the Cabinet, as well as confirmation by the Senate. In those instances where no specific authority to appoint an executive director has been delegated, general authority found in s. 20.05(1)(g), F.S., is relied upon to employ an executive director. Executive directors who are employees, as opposed to appointees, are not subject to Senate confirmation.

The four departments which are headed by the Governor and Cabinet are compared based upon number of employees and appropriations for fiscal years 1999-2000 and 1998-1999 below.

GOVERNOR AND CABINET DEPARTMENTS BY FTEs AND APPROPRIATIONS				
Department	FY 99-00 FTEs	FY 99-00 Funds	FY 98-99 FTEs	FY 98-99 Funds
Law Enforcement	1,646.00	\$143,689,893	1,579.00	\$145,003,587
Veterans' Affairs	406.50	\$25,740,779	402.50	\$24,441,243
Highway Safety & Motor Vehicles	4,966.00	\$339,312,294	4,973.00	\$327,117,640
Revenue	5,503.50	\$3,202,173,992	5,513.25	\$3,107,433,643

Governor and Cabinet as Collegial Body

In addition to sitting as the agency head of four departments, the Governor and Cabinet (or the Governor and certain members of the Cabinet) also sit as boards, commissions, or other collegial bodies:

- ▶ Administration Commission
- ▶ State Board of Administration
- ▶ State Board of Education
- ▶ State Board of Executive Clemency
- ▶ State Board of Trustees of the Internal Improvement Trust Fund
- ▶ State Board of Trustees of the Land Acquisition Trust Fund
- ▶ Power Plant Siting and Transmission Line Siting Board

The Administration Commission

The Governor and Cabinet sit as the Administration Commission,¹⁵ which reviews and approves numerous actions and policies of the executive branch. The Administration Commission is created within the Executive Office of the Governor.¹⁶ The Governor is chair of the commission, though either the Governor or the Comptroller may call a meeting of the commission when the need arises. Unless otherwise provided, affirmative action by the commission requires approval of the Governor and at least three other members of the commission.

In performing its various duties, the Administration Commission sits as other entities. For example, s. 14.203, F.S., provides for the creation of the State Council on Competitive Government and provides that the council is composed of the Governor and Cabinet “. . . sitting as the Administration Commission. . . .” The purpose of the council is to ensure that state services be performed in the most effective and efficient manner in order to provide the best value to the citizenry. The Administration Commission also sits as the Florida Land and Water Adjudicatory Commission (FLAWAC).¹⁷ In this capacity, it is authorized to adopt rules to ensure compliance with the area of critical state concern program and for developments of regional impact. Further, whenever there is an appeal of certain water management rules, the Cabinet, sitting as the Administration Commission, reviews those rules as set forth in ch. 403, F.S. The Administration Commission also has duties related to review of proposed revisions to the state comprehensive plan.¹⁸

¹⁵Section 14.202, F.S.

¹⁶Section 215.44(1), F.S.

¹⁷Section 380.07, F.S.

¹⁸Section 186.008, F.S.

The Administration Commission also appoints the director of the Division of Administrative Hearings.¹⁹ Further, the Administration Commission grants exemptions under s. 120.63, F.S., and adopts the Uniform Rules of Procedure under ss. 120.54 and 120.542, F.S.

The State Board of Administration

The State Board of Administration (SBA) is created in Article XII, s. 9 of the State Constitution. Membership on the State Board of Administration includes the Governor, who serves as chair, the Comptroller, and the Treasurer.²⁰

The constitutional duties of the SBA stem from the gas tax. Its other fiduciary fund management responsibilities are solely statutory. Section 215.44(1), F.S., provides that the SBA invests all the funds in the System Trust Fund,²¹ and all other funds specifically required by law to be invested by the board pursuant to ss. 215.44-215.53, F.S. The SBA is the fiduciary body of the Florida Retirement Trust Fund, manages the Local Government Retirement Trust Fund, the Local Government Surplus Funds Trust Fund, deferred prize moneys of the Lottery, and numerous other funds. Consequently, the SBA is responsible for managing and investing state assets valued over \$100 billion.

While no specific statutory authority is provided for appointment of an executive director of the SBA, the statutes contain numerous references to the existence of an executive director.²² General authority for boards to employ an executive director is found in s. 20.05(1)(g), F.S. The statutes do not require confirmation of the executive director of the SBA or to the qualifications he or she should have. The board is delegated authority to retain investment advisers or managers, or both, external to in-house staff, to assist the board in carrying out its powers.²³

The State Board of Education

Under Article IX, s. 2 of the State Constitution, the Governor and Cabinet constitute a State Board of Education that has “. . . such supervision of the

¹⁹Section 120.65, F.S.

²⁰Article IX, s. 16 of the State Constitution (1885), and continued by Art. XII, s. 9 of the State Constitution (1968).

²¹Section 121.021(36), F.S.

²²*See*, ss. 215.475, 376.3075, 376.86, 420.509, and 517.1204, F.S.

²³Section 215.44, F.S.

system of public education *as is provided by law [emphasis added]*.” By statute, the Governor is chair of the board and the Commissioner of Education is the secretary and executive officer.²⁴ Section 229.053, F.S., provides:

The State Board of Education is the chief policymaking and coordinating body of public education in Florida. It has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it for the improvement of the state system of public education. Except as otherwise provided herein, it may, as it shall find appropriate, delegate its general powers to the Commissioner of Education or the directors of the divisions of the department.

Section 229.053, F.S., assigns specific duties to the State Board of Education, including, the adoption of educational objectives and plans; exercising general supervision over the Department of Education to ensure coordination and resolve controversies, to minimize problems of articulation and transfers, to ensure maximum utilization of facilities; to adopt minimum and uniform standards of college-level communication and computation skills; approve plans for cooperating with the Federal Government and other public agencies; creating subordinate advisory bodies as required by law or as necessary for the improvement of education; constituting the State Board for Career Education or other structures as required by federal law; identifying future training needs; establishing a clearinghouse for information on educational programs of value to economic development; contracting with independent institutions for the provision of those educational programs and facilities which will meet needs unfulfilled by the state system of public postsecondary education; and, recommending that a district school board take action consistent with the state board’s decision relating to an appeal of a charter school application.

The Board of Executive Clemency

Article IV, s. 8 of the State Constitution, provides

- (a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the secretary of state, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.
- (b) In cases of treason the governor may grant reprieves until adjournment of the regular session of the legislature convening next after the conviction, at

²⁴Section 229.012, F.S.

which session the legislature may grant a pardon or further reprieve; otherwise the sentence shall be executed. . . .

The Governor and Cabinet sit as the Board of Executive Clemency,²⁵ which reviews petitions for clemency from inmates of the state prison system and others. Chapter 940, F.S., contains some notice requirements, the method for applying for executive clemency, and requires the Department of Corrections to inform and educate inmates about the restoration of civil rights.

Others

The Board of Trustees of the Internal Improvement Trust Fund - The Board of Trustees of the Internal Improvement Trust Fund²⁶ purchases and holds title to the lands of the state, a duty which was formerly within the Department of Natural Resources, but which was merged into the Department of Environmental Protection.²⁷

The Board of Trustees of the Land Acquisition Trust Fund - The Governor and Cabinet also sit as the Board of Trustees of the Land Acquisition Trust Fund.²⁸

The Power Plant Siting and Transmission Line Siting Board - The Governor and Cabinet also sit as an appellate body in matters relating to power plant siting and transmission line siting, as set forth in Part II of ch. 403, F.S., the Florida Electrical Power Plant Siting Act.

²⁵Section 14.28, F.S.

²⁶Section 253.001, F.S., provides that “[t]he existence of the Board of Trustees of the Internal Improvement Trust Fund is reaffirmed. All lands held in the name of the board of trustees shall continue to be held in trust for the use and benefit of the people of the state pursuant to s. 7, Art. II, and s. 11, Art. X of the State Constitution.”

²⁷The Internal Improvement Trust Fund is established in s. 253.01, F.S. Receipts from sales of land granted to Florida by the Congress and revenues received from application fees for use of such land must be deposited in the trust fund.

²⁸The Land Acquisition Trust Fund is created in s. 375.041, F.S. The purpose of the trust fund is to facilitate and expedite the acquisition of land, water areas, and related resources required to accomplish the purposes of the Outdoor Recreation and Conservation Act of 1963, ch. 375, F.S.

Departments Headed by a Single Cabinet Officer

In addition to the collegial duties delineated above, each cabinet officer also serves as the head of a department as provided in general law.²⁹ In 1968, the constitution was revised to provide that the administration of the executive departments, unless otherwise provided in the constitution, is to be placed under the direct supervision of: (1) the Governor; (2) the Lieutenant Governor; (3) the Governor and Cabinet; or (4) a member of the Cabinet. The Legislature, in enacting the Governmental Reorganization Act of 1969, determined that each cabinet officer should serve as the head of a department which manages programs and duties for which that cabinet officer is constitutionally charged. These departments, however, in addition to administering programs directly relevant to the constitutional duties and functions charged to their respective agency head, administer many other programs and functions.

There are six departments that are headed by cabinet officers. A discussion of the individual departments follows. Each department headed by a cabinet officer is compared by amount of appropriation and number of employees in the chart below.

CABINET OFFICER HEADED DEPARTMENTS BY FTEs AND APPROPRIATION				
Department	FY 99-00 FTEs	FY 99-00 Funds	FY 98-00 FTEs	FY 98-00 Funds
Agriculture & Consumer Services	3,588.75	\$284,559,189	3,460.25	\$253,501,064
Banking & Finance	898.00	\$65,770,971	876.00	\$64,875,886
Education	885.00	\$14,317,049,58 9	884.00	\$13,487,581,25 8
Insurance	1,534.00	\$114,690,823	1,491.00	\$111,439,672
Legal Affairs	1,002.50	\$120,093,066	966.00	\$106,319,471
States	758.00	\$147,700,084	743.00	\$149,365,166

²⁹Article IV, s. 4(a) of the State Constitution, provides that “[i]n addition to the powers and duties specified herein, they [the cabinet officers] shall exercise such powers and perform such duties as may be prescribed by law.”

Commissioner of Education and the Department of Education

Article IX, s. 1 of the State Constitution, provides that:

[t]he education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made *by law* for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require [*emphasis added*].

The State Constitution provides for the division of supervisory responsibilities over the system of public education in Florida. It creates a State Board of Education and a Commissioner of Education which are to have supervisory authority *as provided in law*. Additionally, the State Constitution provides that the school boards³⁰ of the 67 school districts,³¹

. . . shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein and the 67 school districts all have constitutionally-created supervisory authority of the education system. This supervisory authority has been more specifically assigned in statute. Additionally, the Legislature has created a number of entities with statutorily-assigned duties related to education.

The Legislature is responsible for designing the system of schools, colleges, and universities that make up the state's education system. The Florida School Code consists of chapters 228 through 246, F.S. General provisions for education are established in ch. 228, F.S., and the functions, powers, and duties of the State Board of Education, the Commissioner of Education, and the Department of Education are established in ch. 229, F.S.

³⁰Article IX, s. 4 (a) of the State Constitution, provides that each school district has a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

³¹Article IX, s. 4(a) of the State Constitution, provides that each county is a school district, though contiguous counties may combine their school districts.

Section 228.041, F.S., provides that the state system of public education consists of publicly supported and controlled schools,³² institutions of higher education,³³ other educational institutions,³⁴ and other educational services that are provided or authorized by the Constitution and laws of Florida.

The State Board of Education - Under Article IX, s. 2 of the State Constitution, the Governor and Cabinet constitute a State Board of Education that has “. . . such supervision of the system of public education as is provided by law.” The Governor is chair of the board, and the Commissioner of Education is the secretary and executive officer.³⁵ Section 229.053, F.S., provides:

The State Board of Education is the *chief policymaking and coordinating body* of public education in Florida. It has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it for the improvement of the state system of public education. Except as otherwise provided herein, it may, as it shall find appropriate, delegate its general powers to the Commissioner of Education or the directors of the divisions of the department.

Section 229.053, F.S., assigns specific duties to the State Board of Education. These duties include:

³²Section 228.041, F.S., defines *public schools* to mean . . . kindergarten classes; elementary and secondary school grades and special classes; adult, part-time, vocational, and evening schools, courses, or classes authorized by law to be operated under the control of school boards; and developmental research schools to be operated under the control of the State University System.

³³*Institutions of higher education* are defined to mean . . . all state-supported educational institutions offering work above the public school level, other than community colleges, that are authorized and established by law, together with all activities and services authorized by law to be administered by or through each of those institutions.

³⁴*Other educational institutions* is defined to mean . . . [o]ther state-supported institutions primarily of an educational nature shall be considered part of the state system of public education. The educational functions of other state-supported institutions which are not primarily of an educational nature but which have specific educational responsibilities shall be considered responsibilities belonging to the state system of public education.

³⁵Section 229.012, F.S.

- ▶ Adoption of comprehensive educational objectives for public education;
- ▶ Adoption of comprehensive long-range plans and short-range programs for the development of the state system of public education;
- ▶ Exercising general supervision over the divisions of the Department of Education as necessary to ensure coordination of educational plans and programs, to resolve controversies, minimize problems of articulation and transfers, to assure students acquire competency prior to moving to the next level, and to ensure maximum utilization of facilities;
- ▶ Adoption of minimum and uniform standards of college-level communication and computation skills;
- ▶ Adoption of estimates of expenditures for the State Board, the Commissioner, boards, institutions, agencies, and services;
- ▶ Holding meetings, transacting business, keeping records, performing other duties necessary for the enforcement of all laws and regulations relating to the state system of public education;
- ▶ Approving plans for cooperating with the Federal Government;
- ▶ Approving plans for cooperating with other public agencies;
- ▶ Reviewing plans for cooperating with nonpublic agencies for the improvement of school conditions;
- ▶ Creating subordinate advisory bodies as required by law or as necessary for the improvement of education;
- ▶ Constituting the State Board for Career Education or other structures as required by federal law;
- ▶ Assisting in the economic development of the state by identifying future training needs;
- ▶ Assisting in the planning and economic development of the state by establishing a clearinghouse for information on educational programs of value to economic development;
- ▶ Contracting with independent institutions accredited by an agency holding membership in the Commission on Recognition of Postsecondary Accreditation for the provision of those educational programs and facilities which will meet needs unfulfilled by the state system of public postsecondary education; and
- ▶ Recommending that a district school board take action consistent with the state board's decision relating to an appeal of a charter school application.

Commissioner of Education - Article IV, s. 4(g) of the State Constitution, also provides that the Commissioner of Education “. . . shall supervise the public education system in the manner prescribed by law.” The Legislature has designated the Commissioner of Education as the chief educational officer of the state and delegated specific authority to the commissioner.³⁶ These powers,

³⁶Section 229.512, F.S.

however, are often statutorily-checked by requiring the commissioner to obtain approval of the State Board of Education or by making the commissioner a member of a collegial body related to education. For example, the commissioner is authorized to suspend a community college president for cause *with the approval of* the State Board of Education.

The powers of the Commissioner of Education are stated in s. 229.512, F.S., to be:

- ▶ To appoint staff necessary to carry out his or her powers and duties;
- ▶ To suspend, for cause, with the approval of the State Board of Education, a public community college president;
- ▶ To advise and counsel with the State Board of Education on all matters pertaining to education and to recommend actions and policies that should be acted upon or adopted, and to execute approved acts or policies;
- ▶ To call special meetings of the State Board of Education as the commissioner deems necessary;
- ▶ To keep records of the state board;
- ▶ To have a seal;
- ▶ To assemble all data relative to the preparation of the long-range plan for the development of the state system of public education;
- ▶ To recommend to the state board policies and steps designed to protect and preserve the State School Fund and to administer the fund;
- ▶ To take action on the release of mineral rights based upon the recommendations of the Board of Trustees of the Internal Improvement Trust Fund;
- ▶ To submit recommendations for expenditures for various educational boards;
- ▶ To develop and implement a plan for cooperating with the Federal Government in carrying out educational programs and to recommend policies for administering funds appropriated by Congress;
- ▶ To develop and implement policies for cooperating with other public agencies in carrying out those phases of the program in which such cooperation is required by law or deemed by the commissioner to be desirable;
- ▶ To prepare forms and procedures necessary to be used by district school boards and other agencies to ensure uniformity, accuracy, and efficiency;
- ▶ To implement a program of school improvement and education accountability;
- ▶ To develop criteria for use by state instructional materials committees; and
- ▶ To prescribe procedures for evaluating instructional materials.

The Commissioner of Education is required to review rules of the State Board of Education and of the Department of Education on a periodic basis, as determined by the commissioner. He or she is to recommend revisions or repeals to

eliminate obsolete, excessively restrictive, and unnecessary requirements applicable to school districts in the construction, renovation, remodeling, leasing, or repair of facilities and related matters affecting the physical quality of classrooms.³⁷ The commissioner is also required to recommend to the Legislature the revision or repeal of provisions in the Florida Statutes.³⁸

The Commissioner of Education is also delegated rulemaking authority to implement the school code, with the exception of provisions relating to state universities and community colleges and the Florida School for the Deaf and the Blind.³⁹ Far more significant is the power that has been delegated to the Commissioner to waive requirements of chs. 230-239, F.S., upon the request of a school board, with the exception of requirements relating to civil rights, and student health, safety, and welfare.⁴⁰ The commissioner is not permitted to grant waivers for any provisions of law pertaining to the allocation and appropriation of state and local funds for public education; the election, compensation, and organization of school board members and superintendents; graduation and state accountability standards; financial reporting requirements; public meetings; public records; or due process hearings governed by ch. 120, F.S. Prior to granting approval, the commissioner must report pending requests to the State Board of Education on a monthly basis. The commissioner must report to the Legislature all approved waiver requests on an annual basis.

In addition to the authority to waive provisions of the school code, the Legislature has delegated authority to the Commissioner of Education to waive rules of the State Board of Education if a school board has submitted a written request to the commissioner for approval.⁴¹ Requests for waiver of statute or rule must indicate at least how the general statutory purpose will be met, how granting the waiver will assist schools in improving student outcomes related to the student performance standards adopted, and how student improvement will be evaluated and reported. In considering any waiver, the commissioner must ensure protection of the health, safety, welfare, and civil rights of the students and protection of the public interest.⁴² Upon denying a request for a waiver, the

³⁷Section 229.513(1), F.S.

³⁸Section 229.513(2), F.S.

³⁹Section 229.515, F.S.

⁴⁰Section 229.592(9), F.S.

⁴¹Section 229.592(9)(b), F.S.

⁴²Section 229.592(9)(c), F.S.

commissioner must state with particularity the grounds, or basis for the denial. The commissioner is required to report the specific statutes and rules for which waivers are requested and the number and disposition of these requests to the State Board of Education for use in determining which statutes and rules stand in the way of school improvement.⁴³

Duties of the Commissioner of Education are also provided in s. 229.551, F.S. That section provides that the commissioner is to:

- ▶ Coordinate department plans for meeting educational needs and for improving the quality of education;
- ▶ Coordinate management information system development for all levels of education and for all divisions of the department;
- ▶ Develop database definitions and all other items necessary for full implementation of a comprehensive management information system;
- ▶ Coordinate all planning functions for all levels and divisions within the department;
- ▶ Coordinate all cost accounting and cost reporting activities for all levels of education, including public schools, vocational programs, community colleges, and institutions in the State University System;
- ▶ Develop and coordinate a common course designation and numbering system;
- ▶ Expand and maintain common course designation and numbering system; and
- ▶ Develop common definitions necessary for managing a uniform coordinated system of career education for all levels of the state system of public education.

⁴³Section 229.592(9)(d), F.S.

The Commissioner of Education also sits on numerous boards, commissions, and other public-private entities.⁴⁴ Further, the commissioner is required by statute to make appointments to various boards, commissions and other entities.⁴⁵

Department of Education - Section 20.15, F.S., establishes the Department of Education and designates the Commissioner of Education as the agency head. The Commissioner of Education exercises general supervision over the activities

⁴⁴The Commissioner of Education sits on the following entities: Child Welfare Standards and Training Council under s. 402.40, F.S.; Clean Fuel Florida Advisory Board under s. 403.42, F.S.; State Board of Community Colleges under s. 240.307, F.S.; Commission on Community Service under s. 14.29, F.S.; Criminal Justice Executive Institute Policy Board under s. 943.1755, F.S.; Criminal Justice Standards and Training Commission under s. 943.11, F.S.; Board of Directors, Drug Abuse Resistance Education under s. 233.0664, F.S.; Drug Policy Advisory Council under s. 397.333, F.S.; State Board of Education under Art. IX, s. 2, State Constitution and ss. 20.15 and 229.012, F.S.; Education Technology Foundation under s. 239.251, F.S.; Board of Directors, Enterprise Florida, Inc., under s. 288.901, F.S.; Council on Equity in Athletics under s. 240.533, F.S.; Health Information Systems Council under s. 381.90, F.S.; Board of Directors, High School Athletics Governing Organization under ss. 232.63, 232.64 and 232.65, F.S.; Instructional Materials Committee under s. 233.07, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on Interstate Cooperation under s. 13.05, F.S.; Juvenile Justice Standards and Training Commission under s. 985.406, F.S.; Martin Luther King, Jr. Institute for Nonviolence Advisory Board under s. 240.632, F.S.; Occupational Access and Opportunity Commission under s. 413.83, F.S.; Occupational Forecasting Conference under s. 216.136, F.S.; Political Party State Executive Council under s. 103.091, F.S.; Coordinating Council on Radon Protection under s. 404.056, F.S.; Board of Regents under s. 240.207, F.S.; Partnership for School Readiness under s. 411.01, F.S.; SMART Schools Clearinghouse under s. 235.217, F.S.; Technology Council under s. 282.3091, F.S.; Commission for Transportation Disadvantaged under s. 427.012, F.S.; Violent Crime Council under s. 943.031, F.S.; WAGES Board of Directors under s. 414.026, F.S.

⁴⁵The Commissioner of Education makes appointments to: Agricultural and Livestock Fair Council under s. 616.21, F.S.; Council for the Florida School of Arts under s. 242.65, F.S.; Building Construction Industry Advisory Committee under s. 489.509, F.S.; Charter School Review Panel under s. 228.056, F.S.; Child Abuse Death Review Committee under s. 383.402, F.S.; College Reach-out Program Advisory Council under s. 240.61, F.S.; State Board of Community Colleges under s. 240.307, F.S.; Comprehensive Health Information System Advisory Council under s. 408.05, F.S.; Department of Education, Councils and Committees under s. 20.15, F.S.; Deputy Commissioners under s. 20.15, F.S.; Board of Directors, Direct-Support Organizations under s. 229.8021, F.S.; Distance Learning Network Advisory Council under s. 241.003, F.S.; Economic Development Liaison under s. 288.021, F.S.; Education Success Incentive Council under s. 228.502, F.S.; Employment Task Force for Adults with Disabilities under s. 239.5144, F.S.; Board of Directors, Endowment Foundation for Florida's Graduates under s. 446.609, F.S.; Task Force on Gender Equity in Education under s. 228.2001, F.S.; Board of Directors, Healthy Kids Corporation under s. 624.91, F.S.; Board of Directors, High School Athletics Governing Organization under s. 232.63, F.S.; Impaired Educators Recovery Network Program Staff under s. 231.263, F.S.; Instructional Materials Committees under s. 233.07, F.S.; Instructional Technology Grant Review Panel under s. 229.603, F.S.; Joint Developmental Research School Planning, Articulation, and Evaluation Committee under s. 228.054, F.S.; Advisory Board for Multiagency Service Network for Students with Severe Emotional Disturbance under s. 230.2317, F.S.; Satellite Facilities Review Committee under s. 235.198, F.S.; Council of Student Financial Aid Advisors under s. 240.421, F.S.; Student Financial Aid Eligibility Appeals Committee under s. 240.4042, F.S.; Teacher Preparation Program Committee under s. 240.529, F.S.; Selection Committee, Teacher of the Year under s. 231.6255, F.S.; Teaching Profession Enhancement Grant Advisory Committee under s. 240.5291, F.S.; and Commission on the Status of Women under s. 14.24, F.S.

and divisions within the Department of Education. Nine divisions are established within the Department of Education:⁴⁶

1. The Division of Community Colleges.⁴⁷
2. The Division of Public Schools and Community Education.⁴⁸
3. The Division of Universities.
4. The Division of Workforce Development.⁴⁹
5. The Division of Human Resource Development.
6. The Division of Administration.
7. The Division of Financial Services.
8. The Division of Support Services.
9. The Division of Technology.

Section 20.15, F.S., however, places limitations on the Commissioner of Education's ability to hire based upon the particular division of the department. Of the nine divisions created within the department by ch. 20, F.S., seven divisions have directors that are appointed by the commissioner. These appointments, however, are *subject to approval by the State Board of Education*.⁵⁰ Though not explicitly stated, it would be expected that executives and other employees within those seven divisions would come directly under the commissioner's firing authority.

The remaining two departmental divisions created in ch. 20, F.S., have boards that serve as division directors. In the case of the Division of Universities, whose division director is the Board of Regents, the chancellor is the chief administrative officer of the board and the chancellor is responsible for

⁴⁶Section 20.15(3), F.S.

⁴⁷Section 20.15(5)(c), F.S., provides that the State Board of Education and the Commissioner of Education are to assign such powers, duties, responsibilities, and functions as are necessary to ensure the coordination, efficiency, and effectiveness of community colleges, except those duties specifically assigned to the Commissioner of Education in ss. 229.512 and 229.551, F.S., the duties concerning physical facilities in ch. 235, F.S., and the duties assigned to the Division of Workforce Development in ch. 239, F.S.

⁴⁸Section 20.15(5)(a), F.S., provides that the State Board of Education and the Commissioner of Education are to assign to this division such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in prekindergarten through 12th grade, for secondary school vocational education, and for community education.

⁴⁹Section 20.15(5)(b), F.S., provides that the State Board of Education and the Commissioner of Education must assign to the division such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of workforce development education.

⁵⁰Section 20.15(4), F.S.

appointing all employees of the board.⁵¹ These employees serve under his or her direction and control and not under the control of the commissioner.

Additionally, the Division of Community Colleges, whose division director is the State Board of Community Colleges, is provided the authority to appoint an executive director for the state community college system.⁵² The executive director is in charge of the offices of the board, including appointment and termination of staff.

The commissioner is required by law to appoint a Deputy Commissioner for Educational Programs.⁵³ Additionally, the commissioner is required by law to appoint a Deputy Commissioner for Planning, Budgeting, and Management.⁵⁴ No restrictions appear to apply on these two appointments.

Thus, it appears that there are only seven divisions within the Department of Education over which the Commissioner of Education has direct hiring and firing ability and, even in those divisions, hiring of division directors is subject to approval of the state board of education.

The Department of Education is required to identify all functions that contribute to or comprise the state system of educational accountability and to establish within the department the necessary organizational structure, policies, and procedures for effectively coordinating such functions. These policies and procedures are required to clearly fix and delineate responsibilities for various aspects of the system and for overall coordination of the system.⁵⁵ Additionally, as part of the system of educational accountability, the department is required to:

- ▶ Develop minimum performance standards for various grades and subject areas;
- ▶ Administer the statewide assessment testing program;
- ▶ Develop and administer an educational evaluation program;

⁵¹Section 240.209(2), F.S.

⁵²Section 240.311(4), F.S.

⁵³Section 20.15(2)(a), F.S., provides that the Deputy Commissioner of Educational Programs has such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of kindergarten through 12th-grade education and vocational and continuing education programs.

⁵⁴Section 20.15(2)(b), F.S., provides that the Deputy Commissioner for Planning, Budgeting, and Management has such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination of policies, programs, and procedures for the statewide system of education and the department.

⁵⁵Section 229.551, F.S.

- ▶ Review school advisory councils of each district;
- ▶ Conduct program evaluations;
- ▶ Maintain a listing of college-level communication and computation skills and to submit to the State Board of Education for approval;
- ▶ Maintain a listing of tests and other assessment procedures which measure and diagnose student achievement of college-level communication and computation skills and to submit to the State Board of Education for approval;
- ▶ Develop or contract for, and submit to the State Board of Education for approval, tests which measure and diagnose student achievement of college-level and communication and computation skills; and
- ▶ Perform any other functions that may be involved in educational planning, research, and evaluation or that may be required by the commissioner, the State Board of Education or law.

Other Educational Entities - The Legislature has created a number of entities with statutorily-assigned duties relating to education:

- ▶ Articulation Coordination Committee
- ▶ Board of Career Education
- ▶ Board of Community Colleges
- ▶ Board of Independent Colleges and Universities
- ▶ Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools
- ▶ Board of Nonpublic Career Education
- ▶ Board of Regents
- ▶ Postsecondary Education Planning Commission

Articulation Coordination Committee - This commission's membership is required to represent public and nonpublic postsecondary institutions.⁵⁶ The commission studies degree programs, identifies levels of courses, and makes recommendations to the State Board of Education regarding the levels of courses.

Board of Career Education - The State Board of Education constitutes the State Board of Career Education.⁵⁷

Board of Community Colleges - The Board of Community Colleges is composed of the Commissioner of Education, one student, and 11 lay citizens

⁵⁶Section 229.551(1)(f), F.S.

⁵⁷Section 229.053(2)(k), F.S.

appointed by the Governor, approved by four members of the State Board of Education, and confirmed by the Senate in regular session.⁵⁸ The Board of Community Colleges is the director of the Division of Community Colleges in the Department of Education.⁵⁹

Duties of the Board of Community Colleges are provided in s. 240.311, F.S. This section provides that the board:

- ▶ Is responsible for the operation and maintenance of the community college system⁶⁰ in a coordinated, efficient, and effective manner.
- ▶ May adopt rules which must be submitted to the State Board of Education for approval.

Other duties are provided in s. 240.311, F.S. Further, duties of the board also may be assigned by the Commissioner of Education and the State Board of Education as necessary to ensure the coordination, efficiency, and effectiveness of community colleges, except those duties specifically assigned to the Commissioner of Education in ss. 229.512-229.551, F.S., the duties concerning physical facilities in ch. 235, F.S., and the duties assigned to the Division of Workforce Development in ch. 239, F.S.⁶¹

The Board of Community Colleges is authorized to appoint, and may suspend or dismiss, an executive director of the community college system.⁶² No statutory provision requires Senate confirmation of the executive director. The executive director serves as executive officer and as secretary to the board. The executive director is authorized to appoint and terminate staff, to represent the board before the Legislature and the State Board of Education, and prepare legislative budget requests for the system.

Board of Independent Colleges and Universities - The State Board of Independent Colleges and Universities is established in the Department of

⁵⁸Section 240.307, F.S.

⁵⁹Sections 20.15(4) and 240.311, F.S.

⁶⁰*Community colleges* are defined to mean . . . all educational institutions which are operated by local community college district boards of trustees under specific authority and regulations of the State Board of Education and which offer courses and programs of general and academic education parallel to that of the first and second years of work in institutions in the State University System, of career education, and of adult continuing education.

⁶¹Section 20.15(5), F.S.

⁶²Section 240.311(4), F.S.

Education. The department provides administrative services to the board, including payroll, procurement, and legal counsel to the board, but all duties prescribed by law are exercised independently of the department.⁶³ The board appoints, on the recommendation of its chairperson, executives, deputies, clerks, and employees of the board.⁶⁴

Board of Nonpublic Career Education - The State Board of Nonpublic Career Education is created in the Department of Education.⁶⁵ The board has nine members appointed by the Governor, and which are confirmed by the Senate.⁶⁶ The department provides administrative services to the board, including payroll, procurement, and related administrative functions.⁶⁷ The board appoints, on the recommendation of its chairperson, executives, deputies, clerks, and employees of the board.⁶⁸ All other powers, duties, and functions prescribed by law are exercised independently. Powers and duties of the board include:⁶⁹

- ▶ Holding meetings to administer ss. 246.201-246.231, F.S.;
- ▶ Prescribing and recommending to the State Board of Education rules as required by ss. 246.201-246.231, F.S.;
- ▶ Administering ss. 246.201-246.231, F.S., and executing rules adopted by the State Board of Education for the establishment and operation of independent schools;
- ▶ Appointing executives, deputies, clerks, and employees;
- ▶ Maintaining records;
- ▶ Cooperating with other state and federal agencies in administering ss. 246.201-246.231, F.S.;
- ▶ Preparing an annual budget;
- ▶ Transmitting all fees, donations, and other receipts of money to the State Treasurer to be deposited in the General Revenue Fund;
- ▶ Providing an annual report to the Governor, Senate President and Senate minority leader, Speaker of the House and House minority leader;

⁶³Section 246.031, F.S.

⁶⁴Section 246.041(1)(h), F.S.

⁶⁵Section 246.205(1), F.S.

⁶⁶Section 246.205(2), F.S.

⁶⁷Section 246.205(1), F.S.

⁶⁸Section 246.207(1)(f), F.S.

⁶⁹Section 246.207, F.S.

- ▶ Causing to be investigated criminal justice information;
- ▶ Serving as a central agency for collection and distribution of current information regarding institutions licensed by the board; and
- ▶ Establishing and publicizing the procedures for receiving and responding to complaints from students, faculty, and others about schools or programs licensed by the board.

Additionally, the board may sue or be sued; enter into contracts with the Federal Government, other departments of the state, or individuals; receive bequests and gifts; appoint committees to assist in developing standards; issue a license to any school subject to the sections under its jurisdiction; with the approval of the State Board of Education, establish and operate a branch office in the southeastern part of the state; and establish and administer a statewide, fee-supported financial program through which funds will be available to complete the training of a student who enrolls in a nonpublic school that terminates a program or ceases operation before the student has completed his or her program.

Board of Regents - The Board of Regents (BOR) is created as a corporate body with all attendant powers.⁷⁰ The BOR consists of the Commissioner of Education and 13 citizens of the state. The 13 other members are selected from the state at large, representative of the geographical areas of the state; have been residents and citizens for a period of at least 10 years prior to their appointment (one who is registered as a full-time student in the State University System and a resident for at least 5 years). These members are appointed by the Governor, approved by three members of the Cabinet, and confirmed by the Senate.

The BOR is required to appoint a Chancellor who is qualified by training and experience to understand the problems and needs of the state in the field of postsecondary education.⁷¹ The Chancellor is the chief administrative officer of the board and is responsible for appointing all employees of the BOR. The Chancellor serves at the pleasure of the BOR and the employees of the BOR serve under his or her direction and control. There is no statutory requirement that the Chancellor be confirmed by the Senate.

Duties of the BOR include:

- ▶ Developing a plan for the future expansion of the State University System;
- ▶ Appointing or removing the president of each university;

⁷⁰Section 240.205, F.S.

⁷¹Section 240.209(2), F.S.

- ▶ Approving new degree programs;
- ▶ Preparing legislative budget requests;
- ▶ Establishing student fees;
- ▶ Establishing and maintaining systemwide personnel programs for all State University System employees;
- ▶ Recommending to the Legislature proposed changes in the Capital Improvement Trust Fund and building fees;
- ▶ Terminating programs at the state universities;
- ▶ Adopting a systemwide strategic plan;
- ▶ Coordinating and providing for educational television;
- ▶ Seeking the cooperation and advice of superintendents and board members of local school districts in the state in performing its duties; and
- ▶ Adopting rules.

Additional duties are provided in s. 240.209(5), F.S.

Postsecondary Education Planning Commission - The Postsecondary Education Planning Commission is created within the Department of Education.⁷² It is housed within the office of the Commissioner of Education, but it exercises its responsibilities independently. The commission is composed of 11 members of the general public and one full-time student representing the postsecondary education system. Each member is appointed by the Governor, approved by three members of the State Board of Education other than the Governor, and confirmed by the Senate.⁷³ The commission is authorized to appoint an executive director to serve at its pleasure. The executive director is the chief administrative officer of the commission and is responsible for appointing all employees and staff members of the commission who serve under his direction and control.⁷⁴ Duties of the commission include:

- ▶ Serving as an advisory body to the State Board of Education and other state agencies on all matters relating to postsecondary education;
- ▶ Coordinating the efforts of postsecondary institutions in Florida and providing independent policy analyses and recommendations to the State Board of Education;
- ▶ Preparing a master plan for postsecondary education and updating the plan every five years;
- ▶ Recommending guidelines for the development of institutional roles;
- ▶ Recommending contracts with independent institutions to conduct programs;

⁷²Section 240.145, F.S.

⁷³Section 240.145(2), F.S.

⁷⁴Section 240.145(4), F.S.

- ▶ Recommending to the State Board of Education rules concerning the planning and coordination of postsecondary education programs;
- ▶ Advising the State Board of Education regarding new programs, institutions, campuses, and instructional centers;
- ▶ Recommending to the State Board of Education criteria for establishment of new community colleges and state universities;
- ▶ Recommending to the State Board of Education and the Legislature establishment of additional branch campuses;
- ▶ Reviewing instructional centers;
- ▶ Reviewing budget requests for compliance with the state master plan; and
- ▶ Assisting the State Board of Education in the conduct of its postsecondary educational responsibilities.

A review of the number of employees and amounts appropriated for education for fiscal years 1999-2000 and 1998-1999 is provided below.

EDUCATIONAL UNITS BY FTEs AND APPROPRIATION				
Budget Entity	FY 99-00 FTEs	FY 99-00 Funds	FY 98-99 FTEs	FY 98-99 Funds
Div. of Public Schools	118.00	\$8,436,644,455	125.00	\$8,037,258,339
Div. of Community Colleges	53.00	\$550,569,565	52.00	\$521,194,305
Div. of Universities	166.00	\$2,349,485,877	166.00	\$2,257,458,655
Workforce/Admin. Funds	95.00	\$818,641,528	95.00	\$795,251,817
Other	453.00	\$2,161,708,164	446.00	\$1,876,418,142
Total Education	885.00	\$14,317,049,589	884.00	\$13,487,581,258

Comptroller and Department of Banking and Finance

Article IV, s. 4(d) of the State Constitution, provides that the Comptroller is the chief fiscal officer of the state, and that this officer settles and approves accounts against the state. The Comptroller ensures that all money paid into the State Treasury has been deposited correctly, that the expenditures of state agencies have been appropriated by the Legislature, and that the state's general fiscal matters are in compliance with state laws and regulations.

Chapter 17, F.S., outlines the duties of the Comptroller. Section 17.011, F.S., authorizes the Comptroller to appoint an Assistant Comptroller.

Under s. 17.03, F.S., the Comptroller is to audit claims against the state. The Comptroller, using generally accepted auditing procedures for testing or sampling, is required to examine, audit, and settle all accounts, claims, and demands against the state that arise under any law or resolution of the Legislature, and to issue a warrant to the Treasurer to make payment out of the State Treasury. The section also authorizes the Comptroller to establish dollar thresholds applicable to each invoice amount, as well as to establish criteria for testing or sampling invoices on a preaudit and postaudit basis.

Further, the section authorizes the Comptroller to adopt procedural and documentation standards for payment requests and to provide training and technical assistance to agencies. Finally, the section places a legal duty on the Comptroller for delivering all state warrants and charges the Comptroller with the official responsibility of the protection and security of the state warrants held by the office.

In addition to the constitutional duties of the Comptroller, the Legislature appointed the Comptroller as head of the Department of Banking and Finance (DBF).⁷⁵ The former departmental divisions previously identified in statute are no longer specified. Nevertheless, at the time of this report, the DBF is still organized along division lines:

⁷⁵The Department of Banking and Finance is created in s. 20.12, F.S.

1. Division of Accounting and Auditing.⁷⁶
2. Division of Banking.⁷⁷
3. Division of Securities and Finance.⁷⁸
4. Division of Information Systems.⁷⁹

There are also a number of offices in the DBF.⁸⁰ Offices with regulatory responsibility include the Office of Unclaimed Property⁸¹ and the Office of Financial Investigations.⁸²

⁷⁶The Division of Accounting and Auditing ensures public funds are properly accounted for, provides information on how state funds are expended, and informs the public on the financial status of the state. The state's electronic fund transfer (EFT) is administered through this division, as well. Additionally, the division investigates allegations of fraud, waste, or abuse by state agencies or employees and operates an anonymous hotline service for persons to report unscrupulous activity.

⁷⁷The Division of Banking charters, examines, and regulates state-chartered financial institutions to ensure that deposits are protected from loss. Applications for new banks, savings associations, foreign banks, credit unions and trust companies, as well as acquisitions, mergers, cross-industry conversions, changes of control, requests for trust powers and branches, are processed by the division. The division also examines each financial institution under its jurisdiction periodically and issues and monitors formal and informal enforcement actions.

⁷⁸The Division of Securities and Finance protects consumers of the securities and finance industries from illegal financial activities. Applications for registration of non-exempt securities are reviewed prior to public offerings. Applications for registration of securities dealers, investment advisers, branch offices and associated persons are reviewed to ensure compliance with statutes and rules. The division also conducts examinations of affairs, books, and records of registrants. Further, the division reviews applications for licensure of money transmitters, motor vehicle installment sellers, retail installment sellers, sales finance companies, home improvement installment sellers, mortgage brokers and lenders, consumer finance companies, and consumer and commercial collection agencies. Cemetery companies are also regulated.

⁷⁹The Division of Information Services is responsible for the Florida Accounting Information Resource (FLAIR) and the internal regulatory and licensing system of the department. FLAIR is a unified accounting system used by all state agencies and the ten state universities to account for the state's budget. This task is accomplished by use of a mainframe computer at the State Comptroller's Data Center (SCDC). The state's \$18 million yearly payments, the appropriations and budgeting system (LAS/PBS), and applications maintained by the State Treasurer are run at the SCDC. Additionally, the SCDC prints automobile titles for the Department of Highway Safety and Motor Vehicles.

⁸⁰There are a number of offices in the department, including, the Office of Financial Investigations, the Office of the General Counsel, the Office of Training and Development, the Office of Legislative Affairs, the Office of Research and Planning, the Office of Public Information, the Office of Unclaimed Property, and the Office of Cabinet Affairs.

⁸¹The Office of Unclaimed Property holds unclaimed assets in protective custody for missing owners. Approximately \$550 million in unclaimed assets is currently held by the office.

⁸²The Office of Financial Investigations responds to consumer complaints alleging violations of individuals or companies regulated by the DBF. The Comptroller's Hotline and the Funeral and Cemetery Services Hotline are operated in this office. The office also conducts investigations into allegations of suspected fraud against state government and white-collar criminal activities.

The principal licensing, chartering, regulatory, and civil enforcement powers of the department are conferred by the following statutory provisions:

- Chapter 494, F.S. - Mortgage Brokerage and Mortgage Lending
- Chapter 497, F.S. - Florida Funeral and Cemetery Services Act
- Chapter 516, F.S. - Florida Consumer Finance Act
- Chapter 517, F.S. - Florida Securities and Investor Protection Act
- Chapter 520, F.S. - Retail Installment Sales
- Chapter 559, F.S. - Regulation of Trade, Commerce, and Investments
- Chapter 560, F.S. - Money Transmitters Code
- Chapters 655 through 665, F.S. - Financial Institutions Codes
- Chapter 716, F.S. - Escheats
- Chapter 717, F.S. - Florida Disposition of Unclaimed Property Act

The DBF has 898 FTEs and an appropriated budget of approximately \$65.8 million for FY 1999-2000. There are six budget entities in the DBF: (1) Comptroller/Division of Administration; (2) Division of Information Systems; (3) Financial Accountability for Public Funds Program (Division of Accounting and Auditing); (4) Financial Institutions Regulatory Program (Division of Banking); (5) Unclaimed Property Program; and (6) Consumer Financial Protection and Industry Authorization Program (Division of Securities and Finance and Office of Financial Investigations).

Departmental functions are funded through both general revenue and trust funds. Fifty-five percent of the operating budget is from general revenue, with the remainder from seven trust funds:

- ▶ Administrative Trust Fund⁸³
- ▶ Working Capital Trust Fund⁸⁴
- ▶ Consolidated Payment Trust Fund⁸⁵
- ▶ Regulatory Trust Fund⁸⁶
- ▶ Financial Institutions Regulatory Trust Fund⁸⁷
- ▶ Anti-Fraud Trust Fund⁸⁸
- ▶ Comptroller's Federal Equitable Sharing Trust Fund⁸⁹

Additionally, federal funds going to Florida counties pass through the DBF.⁹⁰ As well, the DBF has a non-operating budget in a number of trust funds.⁹¹

⁸³This fund provides some operating funds for the Comptroller/Division of Administration and the Consumer Financial Protection and Industry Authorization Program. Receipts are primarily from non-operating transfers from other agency trust funds.

⁸⁴The Working Capital Trust Fund is for the internal systems support provided other agency budget entities. Receipts are from operating transfers (data processing appropriations) from the other budget entities.

⁸⁵The Consolidated Payment Trust Fund provides long term financing for equipment needs of state agencies. Investment earnings on the trust fund balance generate receipts for the fund.

⁸⁶The Regulatory Trust Fund provides operating funds for the Consumer Financial Protection and Industry Authorization Program and for the Unclaimed Property Program. The primary source for receipts in this fund is from charges to regulated industries.

⁸⁷The Financial Institutions Regulatory Trust Fund is an operating fund for the Financial Institutions Regulatory Program. Receipts are from charges paid by regulated industries.

⁸⁸The Anti-Fraud Trust Fund provides funds for the Consumer Financial Protection and Industry Authorization Program. Fines and reimbursements for costs of investigations and prosecutions fund this account.

⁸⁹The Comptroller's Federal Equitable Sharing Trust Fund provides resources for the Consumer Financial Protection and Industry Authorization Program. Receipts for the fund come primarily from shared revenue under Federal Asset Sharing Programs.

⁹⁰Funds from the Federal Use of State Lands Trust Fund.

⁹¹Child Support Clearing Trust Fund, Collector/IR Clearing Trust Fund, Consolidated/Misc. Deductions Clearing Trust Fund, EFT Clearing Trust Fund, Employee/Refund Clearing Trust Fund, Federal Tax Levy Clearing Trust Fund, Florida Retirement Clearing Trust Fund, Hospital Insurance Tax Clearing Trust Fund, Restoration Trust Fund, Social Security Clearing Trust Fund, Trust Funds under s. 215.18, F.S., Working Capital Fund, Tobacco Settlement Clearing Trust Fund, Unclaimed Property Trust Fund, Mortgage Brokerage Guaranty Trust Fund, Prenatal Funeral Contract Consumer Protection Trust Fund, and Securities Guaranty Trust Fund.

The Comptroller also sits on various boards, commissions, and public-private organizations.⁹² The Comptroller also makes appointments to various boards, councils, and commissions. Under s. 112.215(8)(a)4.d., F.S., the Comptroller appoints one member, who must be an employee of the Comptroller, to the Deferred Compensation Advisory Council. The Comptroller is also required to appoint two members to the Florida Commission on the Status of Women. Further, under s. 497.101(1), F.S., the Comptroller nominates members to the Board of Funeral and Cemetery Services, which is created within the DBF. The Comptroller is required to nominate three persons per vacancy. The Governor must make appointments from the nominees. Additionally, pursuant to s. 440.49, F.S., the Comptroller makes appointments to the Special Disability Trust Fund Privatization Commission. The Comptroller also selects a WAGES Program Employment Project Coordinator under s. 414.030, F.S.

Secretary of State and the Department of State

Article IV, s. 4(b) of the State Constitution, provides that the Secretary of State must keep the records of the official acts of the legislative and executive departments. Examples of official acts include, executive orders relating to emergencies in the state; reassignment of prosecutors to different circuits; clemency orders; and joint resolutions and memorials. The Secretary of State also receives numerous documents which are required to be filed with the secretary by statute. The duties of the Secretary of State are, however, far broader than just those of a custodian of state records.

As part of the constitutional duties of the office, the Secretary of State sits on a variety of boards and commissions, as well as other entities.⁹³ The Secretary of

⁹²The Comptroller sits on the following entities: State Board of Administration under Art. XII, s. 9 of the State Constitution; Governing Board Secretary of the Division of Bond Finance under s. 215.67, F.S.; State Board of Education under Art. XI, s. 2 of the State Constitution and s. 229.012, F.S.; Board of Directors of Export Finance Corporation under s. 288.776, F.S.; Financial Management Information Board under s. 215.95, F.S.; Chair of the Financial Management Information System Coordinating Council under s. 215.96, F.S.; Board of Directors of the Hurricane Catastrophe Fund Finance Corporation under s. 215.555, F.S.; Board of Directors of the Inland Protection Financing Corporation under s. 376.3075, F.S.; Innovation Committee under s. 216.235, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on Interstate Cooperation under s. 13.05, F.S.; Political Party State Executive Committee under s. 103.091, F.S.; Prepaid Postsecondary Education Expense Board under s. 240.551, F.S.; Special Disability Trust Fund Financing Corporation under s. 440.49, F.S.; Technology Council under s. 282.3091, F.S.; and the Uniform Chart of Accounts Development Committee under s. 281.325, F.S.

⁹³State Board of Education under Art. IX s. 2 of the State Constitution and s. 20.15, F.S.; Elections Canvassing Commission under s. 102.11, F.S.; Board of Directors of Enterprise Florida, Inc. under s. 288.901, F.S.; Enterprise Zone Interagency Coordinating Council under s. 290.009, F.S.; Board of Directors of Export Finance Corporation under s. 288.776, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on

State also makes appointments to various councils, commissions, boards, foundations, review panels, and grant review panels.⁹⁴

Pursuant to s. 20.10(1), F.S., the Secretary of State is the head of the Department of State (DOS).⁹⁵ The DOS has approximately 758 FTEs and an annual budget of just under \$148 million.⁹⁶ Section 20.10(2), F.S., establishes seven divisions within the department:

- (1) Office of the Secretary/Division of Administration.
- (2) Division of Elections.
- (3) Division of Historical Resources.
- (4) Division of Corporations.
- (5) Division of Library and Information Services.
- (6) Division of Licensing.
- (7) Division of Cultural Affairs.

Additionally, the Historic Pensacola Preservation Board and the Ringling Museum of Art are under the DOS.

Office of the Secretary/Division of Administration - The Office of the Secretary is responsible for the executive functions of the DOS and cabinet duties. The Division of Administrative Services is responsible for planning, organizing, directing, coordinating and evaluating administrative and management support services for the department. The Division consists of three bureaus: (1) Bureau of Human Resources; (2) Bureau of General Services; and

Interstate Cooperation under s. 13.05, F.S.; Political Party State Executive Committee under s. 103.091, F.S.; Presidential Candidate Selection Committee under s. 103.101, F.S.; and the Technology Council under s. 282.3091, F.S.

⁹⁴Artists Hall of Fame under s. 265.2865, F.S.; Arts Council under s. 265.285, F.S.; Capitol curator under s. 272.135, F.S.; Civil Law Notaries under s. 118.10, F.S.; Folklife Council under s. 267.161, F.S.; Governor's Mansion Commission under s. 272.18, F.S.; Grove Advisory Council under s. 267.075, F.S.; Historic Preservation Advisory Council under s. 267.0612, F.S.; Historic preservation citizen-support organizations, boards of directors under s. 267.061, F.S.; Historical Marker Council under s. 267.061, F.S.; Board of Directors of the Intergovernmental Relations Foundation under s. 288.809, F.S.; Private Investigation, Recovery, and Security Advisory Council under s. 493.6104, F.S.; Science museum grant review panels under s. 265.608, F.S.; State Librarian under s. 257.031, F.S.; State Library Council under s. 257.02, F.S.; Commission on the Status of Women under s. 14.24, F.S.; Youth and Children's Museum grant review panels under s. 265.609, F.S.

⁹⁵Chapter 15, F.S., which is entitled "Secretary of State," contains residence requirements, the location of the secretary's office, and the duties of the secretary. Additionally, the chapter lists the state tree, state beverage, state bird, and the like.

⁹⁶For FY 1999-2000 budget, General Revenue Funds for the Department of State were \$87,192,694 and Trust Funds were \$60,798,058.

(3) Bureau of Planning, Budget and Financial Services. There are 75 FTEs in this office.

Additionally, the office issues commissions to notaries public appointed by the Governor, including international notaries. The DOS and the Executive Office of the Governor (EOG), however, have interrelated roles in this area.⁹⁷

Additionally, an Office of International Affairs is created within the DOS. The Secretary of State functions as the Chief Cultural Officer of the state.⁹⁸ In this position, the secretary is encouraged to

... initiate and develop relationships between the state and foreign cultural officers, their representatives, and other foreign governmental officials in order to promote Florida as the center of American creativity.⁹⁹

In this position, the Secretary of State is delegated power and authority to:

- ▶ Disseminate any information pertaining to the State of Florida which promotes the state's cultural assets.
- ▶ Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries.
- ▶ Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups.
- ▶ Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida.
- ▶ Establish and maintain the list prescribed in s. 55.605(2)(g), F.S., relating to recognition of foreign money judgments.
- ▶ Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations.
- ▶ Provide, arrange, and make expenditures for the achievement of any or all of the purposes of s. 15.18, F.S.
- ▶ Promulgate rules for entering into contracts which are primarily for promotional services and events.

Responsibilities of the office include the Consular and Diplomatic programs, Sister City/Sister State programs, and International Liaison.

⁹⁷See, Art. IV, s. 7, State Constitution, and Ch. 117, F.S. and ss. 113.01, 113.051, and 113.06, F.S.

⁹⁸Section 15.18, F.S.

⁹⁹Section 15.18, F.S.

The Secretary of State is also designated in ch. 15, F.S., as the chief protocol officer for the state.

For FY 1999-2000, funding for the Division of Administration included General Revenue funds of \$4,313,616 and Trust Funds of \$1,655,759 for a total of \$5,969,375.

Division of Elections - This division is diverse and oversees many different functions. The division is comprised of the Director's office and four bureaus: (1) Election Records; (2) Notaries Public; (3) Administrative Code and Weekly; and (4) Information Management and Voting Systems. There are currently 44 FTEs in this division.

The Division of Elections administers and enforces the state election laws; files acts and papers of the Legislature and county ordinances; files all rules and regulations contained in the Florida Administrative Code; publishes and distributes proposed rules and regulations in the Florida Administrative Weekly for state agencies; issues formal advisory opinions; oversees the Florida Voter Registration Act; issues commissions to all elected and appointed officials; maintains financial disclosures for all constitutional and state officers and specified employees; and qualifies all federal and state candidates.

For FY 1999-2000, division funding was \$4,668,898 in General Revenue and \$1,488,835 in Trust Funds, totaling \$6,157,733.

Division of Historical Resources - The Division of Historical Resources is responsible for the development, implementation, and coordination of programs relating to the identification, protection, preservation, interpretation of Florida history, folk heritage, and historical and archaeological sites throughout the state. The division includes: The Bureau of Archeological Research; Bureau of Historic Preservation; Museum of Florida History; and the Historic Pensacola Preservation Board of Trustees. There are 99 FTEs in the division.

The only permitting authority of the division relates to objects of historical or archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands. Title to such objects is vested in the division. Chapter 267, F.S., the Florida Historical Resources Act, is the principal authority for the division. Chapter 266, F.S., authorizes the Historic Pensacola Preservation Board of Trustees. A number of specific duties are authorized in other sections of statute. For example, the division director is a member of the Land Acquisition and Management Advisory Council pursuant to s. 259.035, F.S., and a member of the Florida Greenways and Trails Council pursuant to s. 260.0142, F.S. Funding for FY 1999-2000 included General

Revenue of \$21,036,688 and \$9,210,777 in Trust Funds for a total of \$30,247,465.

Division of Corporations - This division of the Department of State is the central registrar of business entities and commercial registrations. In essence, the division provides a statewide registry and information resource for almost all business activity in Florida. The types of business entities that are registered include for-profit and nonprofit corporations; general, limited, and limited liability partnerships; limited liability companies, and business trusts. The bureaus within the Division that provide filing and informational services are: Bureau of Commercial Recording and the Bureau of Commercial Information Services. There are 191 FTEs in the division.

The programs and activities of the division earn approximately \$142 million annually, of which over \$131 million are earmarked for the General Revenue Fund and a variety of Trust Funds that support the cultural, historic and public access programs of the department (\$19 million). Funding for the division in FY 1999-2000 out of trust funds was \$12,430,413.

Division of Library and Information Services - The Division of Library and Information Services in the Florida Department of State provides library, records management, and archival services at the state and local level. The 120 FTEs of the division provide direct library services to state government, management services, technical assistance, education, financial aid, and cooperative services. Funding for FY 1999-2000 included \$41,673,239 in General Revenue and \$7,626,745 in Trust Funds for a total of \$49,299,984.

Division of Licensing - The Division of Licensing consists of three bureaus: (1) Bureau of License Issuance;¹⁰⁰ (2) Bureau of Regulation and Enforcement;¹⁰¹ and (3) Bureau of Support Services.¹⁰² There are 136 FTEs in the division. The division budget of \$10,032,036 for FY 1999-2000 is totally funded by licensing fees and assessments.

It is the responsibility of the division to protect the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation

¹⁰⁰The Bureau of License Issuance is responsible for the issuance or denial of licenses and game promotion registrations. The bureau receives and examines applications for licensure for statutory compliance and verifies eligibility of applicants.

¹⁰¹The Bureau of Regulation and Enforcement is responsible for conducting regulatory investigations, compliance inspections, and complaint investigations.

¹⁰²The Bureau of Licensing Support Services coordinates and performs support services for the Division of Licensing.

of the industries.¹⁰³ In addition, the division is responsible for the issuance of concealed weapon or firearm licenses.

Further, the division registers and regulates game promotions (sweepstakes) conducted in Florida.¹⁰⁴ Game promotions in which the total announced value of prizes offered is greater than \$5,000 must register.

Division of Cultural Affairs - The Division of Cultural Affairs is made up of the Office of the Director and the Bureau of Grants Services. The Division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The Division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida. There are 19 FTEs in the division. Funding for FY 1999-2000 was \$12,819,980 in General Revenue and \$15,959,986 in Trust Funds, for a total of \$28,779,966.

Historic Pensacola Preservation Board of Trustees - This board is created within the DOS to preserve, maintain, and operate objects of historical or antiquarian interest of the City of Pensacola and Escambia County.¹⁰⁵ There are 14 FTEs supporting this program in the DOS. Funding for FY 1999-2000 totaled \$880,273 in General Revenue.

Ringling Museum of Art - The Ringling Museum of Art preserves, augments, and exhibits the art collections which John Ringling left to the State of Florida.¹⁰⁶ The museum maintains the Ringling residence, the Asolo Theater, and the Ringling Museum of the Circus, which belong to the state, as well. There are 60 FTEs supporting these programs. Funding for FY 1999-2000 included \$1,800,000 in General Revenue and \$2,393,507 in Trust Funds, totaling \$4,193,507.

The Secretary of State issues commissions of public officers. Additionally, under s. 112.45, F.S., the secretary has duties related to suspension, removal, or reinstatement of public officers.

¹⁰³Chapter 493, F.S.

¹⁰⁴Section 849.094, F.S.

¹⁰⁵Section 266.0011, F.S.

¹⁰⁶Section 265.26, F.S.

Sections 922.12 and 922.15, F.S., provide that after an execution is carried out by a warrant of the Governor, the superintendent of the state prison sends the death warrant and a signed statement of the execution to the Secretary of State. Further, after a death sentence has been executed pursuant to a warrant issued by the Supreme Court, the superintendent must send the warrant and a signed statement of the execution to the Secretary of State.

The secretary also functions as the statutory service agent for service of process issues certifications.

Treasurer and the Department of Insurance

The cabinet post commonly referred to as the “Treasurer” actually encompasses the duties of the Treasurer, Fire Marshal, and Insurance Commissioner. Statute designates the Treasurer’s title as the “Insurance Commissioner and Treasurer.”¹⁰⁷

Article IV, s. 4(e) of the State Constitution, provides:

The treasurer shall keep all state funds and securities. He shall disburse state funds only upon the order of the comptroller. Such order may be in any form and may require the disbursement of state funds by electronic means or by means of a magnetic tape or any other transfer medium.

Chapter 18, F.S., establishes more specific requirements relating to the Treasurer’s position. Section 18.02, F.S., provides that the Treasurer is to pay all warrants on the treasury drawn by the Comptroller and other orders by the Comptroller for the disbursement of state funds. No money is to be paid out of the treasury except on such warrants or other orders of the Comptroller.

The Treasurer maintains three demand accounts in Florida banks chosen on a bid basis. These accounts are used as depositories for state agencies, for payment of state warrants, and for making investment transactions. Sufficient cash is left in the accounts to cover daily disbursements and compensating balances; all other funds are invested. The Treasurer receives and disburses more than \$38 billion annually in state collections from all sources.

The Treasurer’s office is responsible for investing general funds and trust funds. The Treasurer is also the cash manager for Florida state government, performs consulting services and operates a statewide cash concentration account in this capacity.

¹⁰⁷Section 20.13(1), F.S.

The Treasurer's office is responsible for protecting and servicing funds and securities deposited as a prerequisite to doing business in the state. The Treasurer's office is currently providing this trust service to the Department of Banking and Finance, the Department of Management Services, the Department of Insurance, the Florida Lottery, the Department of Transportation, and the Board of Regents.

As administrator of the Florida Security for Public Deposits Acts, the Treasurer oversees and monitors public funds in excess of \$2.7 billion on deposit in 292 banks and savings associations. This is a centralized statewide collateralization program designed to ensure that public deposits of the state and its political subdivision maintained in Florida banks and savings associations are fully protected from loss.

The Treasurer is responsible for the overall administration of the State Employees Deferred Compensation Program. The Treasurer educates prospective and current participants, distributes informational materials, markets the program by conducting presentations and seminars throughout the state, monitors performance of all investment options available to participants, pays all benefit recipients, and manages many other functions.

In addition to the financial responsibilities of the Treasurer, the Legislature has designated the Treasurer as the head of the Department of Insurance (DOI).¹⁰⁸ The Insurance Commissioner and Treasurer is responsible for many types of insurance, including life, property, casualty, title, viatical, marine, fidelity, surety, surplus lines, and health insurance. He also regulates rates and approves all policy forms. The agency head is also required to determine that insurance companies seeking to do business in Florida are financially sound and continue to be sound once approved to do business in the state.

The DOI is required to conduct a financial examination of each domestic insurer at least once every 3 years.¹⁰⁹ The DOI may accept an independent certified public accountant's audit report in lieu of making its own examination and may conduct an examination every 5 years, rather than every 3 years, for an insurer that has held a certificate of authority without a change in ownership for more than 15 years. Under the DOI's current practice, neither of these exceptions to the 3-year mandatory examination is exercised. For a foreign insurer, the DOI may conduct an examination as often as it deems advisable but, in practice, the

¹⁰⁸Section 20.13, F.S.

¹⁰⁹Section 624.316, F.S.

DOI relies upon the examination by the regulatory authority in the insurer's state of domicile, except in rare circumstances.

The DOI also may conduct a market conduct examination of each authorized insurer as often as it deems necessary.¹¹⁰ Under current practice, the DOI exercises its discretion to determine which insurers to examine and how often. The DOI has increased its use of contracts with independent professional examiners for market conduct examinations, as expressly authorized by statute.

The insurance commissioner tests and licenses insurance agents, adjusters, and bail bond agents. He enforces laws relating to health maintenance organizations, prepaid limited health service organizations, continuing care contracts, automobile and home warranty associations, premium finance companies, title insurance, fraternal benefit societies, and donor annuities.

The insurance commissioner is charged with investigating fraud in all lines of insurance, plus violations of the Insurance Code. Additionally, the insurance commissioner administers the funds for retirement of police officers and firefighters. These funds are derived from certain premium taxes on insurance written in cities meeting requirements to use these State funds.

Pursuant to s. 20.13(3)(a), F.S., the DOI must have an assistant insurance commissioner and treasurer, three deputies, and a general counsel. A deputy may also serve as a general counsel. The statute creates 10 divisions within the DOI:

1. Division of Insurer Services.¹¹¹
2. Division of Insurance Consumer Services.¹¹²
3. Division of Agents and Agencies Services.¹¹³

¹¹⁰Section 624.3161, F.S.

¹¹¹This division ensures that Florida citizens are protected by properly regulating insurance companies. The division monitors the financial condition of insurance companies and approves insurance rates.

¹¹²The Division of Insurance Consumer Services assists, informs, and protects Floridians by helping them make better buying decisions and by helping them understand the available products. A toll-free consumer hotline is maintained to answer questions and take complaints. Ten service offices throughout Florida are maintained by the division.

¹¹³The Division of Agents and Agencies Services is responsible for licensing, regulating and investigating the professional activities of insurance agents and agencies. Both the licensing and investigations sections of this division assure the public of a reliable service.

4. Division of Rehabilitation and Liquidation.¹¹⁴
5. Division of Risk Management.¹¹⁵
6. Division of State Fire Marshal.¹¹⁶
7. Division of Insurance Fraud.¹¹⁷
8. Division of Administration.
9. Division of Treasury.¹¹⁸
10. Division of Legal Services.¹¹⁹

Additionally, a number of offices have been established in the DOI which provide legal, legislative, accounting, and administrative support.

The department has 1,536 FTEs and an annual operating budget of \$115.6 million for FY 1999-2000. The DOI has 11 budget entities, which are the ten divisions plus the Office of Information Services. Department activities are totally funded through six trust funds:

¹¹⁴The Division of Rehabilitation and Liquidation supervises, under court order, insurance companies that are in financial trouble. Depending on the financial situation of a company, it is either placed into rehabilitative supervision to help restore it to a stable condition or liquidated.

¹¹⁵The Division of Risk Management administers the state's property and casualty self-insurance trust funds, including state employees' workers' compensation, state liability claims, and state property insurance claims. Safety and loss prevention are also housed in this division to educate and inform all state employees of the importance of safety awareness.

¹¹⁶The Division of Fire Marshal investigates fires and suppresses arson. The division inspects state-owned and state leased property to determine compliance with fire safety codes. It also enforces laws governing explosives, fireworks, fire extinguishers, and sprinkler systems, as well as establishes rules for safe use of these items. The investigative staff of this division are sworn law enforcement officers. Additionally, the division operates a Fire and Arson Laboratory in Quincy, Florida which provides fire debris analyses and film development for the investigations. Further, the Florida State Fire College (FSFC) is a part of the division, though its campus is located in Ocala, Florida.

¹¹⁷The Division of Insurance Fraud investigates all forms of insurance fraud, including illegal and unscrupulous activities by agents, companies and consumers. Such investigations may lead to criminal prosecutions. All enforcement personnel are sworn law enforcement officers.

¹¹⁸The Division of Treasury receives and disburses state funds from all sources, approximately \$38 billion per year. Additionally, it invests state general funds and trust funds. The division acts as the cash manager for state government, performs consulting services and operates a statewide concentration account. The division also is statutorily assigned responsibility for protecting and servicing funds and securities deposited as a prerequisite to doing business in Florida. It also provides trust services to a number of departments, including the Florida Lottery and the Board of Regents. Additionally, the division administers the Florida Security for Public Deposits Acts, which oversees public funds on deposit in financial institutions. The division is also responsible for the State Employees Deferred Compensation Program.

¹¹⁹The Division of Legal Services provides legal representation for the DOI in administrative and judicial proceedings. It also provides legal opinions to the public and the DOI concerning the interpretation and administration of the Insurance Code and related laws.

- ▶ Treasurer's Administrative and Investment Trust Fund¹²⁰
- ▶ Florida Casualty Insurance Risk Management Trust Fund¹²¹
- ▶ State Property Insurance Trust Fund¹²²
- ▶ Agents and Solicitors County Tax Trust Fund¹²³
- ▶ Fire College Trust Fund¹²⁴
- ▶ Insurance Commissioner's Regulatory Trust Fund.¹²⁵

The Legislature has also designated the Insurance Commissioner and Treasurer as the State Fire Marshal.¹²⁶ In this capacity, the Treasurer is responsible for investigating and suppressing arson, educating firefighters and ensuring that state-owned buildings are in conformance with fire codes.

¹²⁰The Treasurer's Administrative and Investment Trust Fund is the operating fund for the Division of Treasury. It covers expenses incurred by the Treasurer in the performance of his duties, as well as supports the program costs associated with the State Employees Deferred Compensation Program. Receipts from an assessment against the average daily balance of funds invested on behalf of state agencies, fees assessed for safekeeping assets, and deferred compensation participant fees fund the account.

¹²¹The Florida Casualty Insurance Risk Management Trust Fund is the state's self-insurance fund for payment of workers' compensation, general liability, automotive liability, federal civil rights claims, and court awarded attorney's fees. The primary source of income to the trust fund is from premiums and assessments imposed on state agencies and are provided through the appropriations process.

¹²²The State Property Insurance Trust Fund is a self-insurance fund for payment for damages to state buildings and contents resulting from fire, lightning, sinkholes, and other hazards. Receipts are from premiums and assessments to state agencies.

¹²³The Agents and Solicitors County Tax Trust Fund is a depository for the county tax portion of the agency/solicitor license and appointment fees and biennial renewal. The primary source of receipts is from the county tax on agency appointments.

¹²⁴The Fire College Trust Fund provides funding for the Florida State Fire College and the Bureau of Fire Standards and Training. Funding is through a surcharge on direct premiums written on commercial property for fire, allied lines, or multiperil insurance, admission fees, dorm rental fees, and the sale of books. This fund will be eliminated on July 1, 2000, and funds transferred to the Insurance Commissioner's Regulatory Trust Fund.

¹²⁵The Insurance Commissioner's Regulatory Trust Fund provides monies for the regulation of the insurance and fire protection industries. Revenue from fines, taxes, licenses, examinations and other fees support the fund. Nine of the eleven budget entities of the department are funded from this trust fund. The two divisions that do not operate from this fund are the Divisions of Treasury and Risk Management.

¹²⁶Section 633.01, F.S.

The Treasurer also sits on various boards, commissions and public-private entities.¹²⁷ Under s. 112.215(8)(a)4.b., F.S., the Treasurer appoints one member, who must be an employee of the Treasurer, to the Deferred Compensation Advisory Council. Additionally, the Treasurer makes appointments to various statutory boards, councils, and commissions.¹²⁸

Commissioner of Agriculture and the Department of Agriculture and Consumer Services

¹²⁷State Board of Administration under Art. XII, s. 9 of the State Constitution and s. 215.44, F.S.; Governing Board Treasurer, Division of Bond Finance under s. 215.62, F.S.; Chair, Board of Directors, Comprehensive Health Association under s. 627.6488, F.S.; State Board of Education under Art. IX, s. 2 of the State Constitution and s. 20.15, F.S.; Education Technology Foundation under s. 239.251, F.S.; Financial Management Information Board under s. 215.95, F.S.; Financial Management Information System Coordinating Council under s. 215.96, F.S.; Health Information Systems Council under s. 381.90, F.S.; Health Insurance Standardized Claim Form Development Committee under s. 408.7071, F.S.; Chair, Board of Directors, Healthy Kids Corporation under s. 624.91, F.S.; Board of Directors, Hurricane Catastrophe Fund Finance Corporation under s. 215.555, F.S.; Board of Directors, Inland Protection Financing Corporation under s. 376.3075, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on Interstate Cooperation under s. 13.05, F.S.; Board of Directors, Motor Vehicle Theft Prevention Authority under s. 860.154, F.S.; Ex Officio Treasurer, Pensacola Historic Preservation Board under s. 266.0015, F.S.; Political Party State Executive Committee under s. 103.091, F.S.; Prepaid College Board under s. 240.551, F.S.; Board of Directors, Small Employer Health Reinsurance Program under s. 627.6699, F.S.; Special Disability Trust Fund Financing Corporation under s. 440.49, F.S.; and Workers' Compensation Oversight Board under s. 440.4416, F.S.

¹²⁸Birth-Related Neurological Injury Compensation Association under s. 766.315, F.S.; Birth-Related Neurological Injury Compensation Plan medical advisory panel under s. 766.308, F.S.; Boiler inspector under s. 554.105, F.S.; Board of Directors Comprehensive Health Association under s. 627.6488, F.S.; Comprehensive Health Information System Advisory Council under s. 408.05, F.S.; Consumer Advocate under s. 627.0613, F.S.; Continuing Education Advisory Board under s. 626.2815, F.S.; Deferred Compensation Advisory Council under s. 112.215, F.S.; Board of Directors, Florida Employee Long-Term Care Plan under s. 110.1227, F.S.; Firefighters Standards and Training Council under s. 633.31, F.S.; Healthy Kids Corporation Board of Directors under s. 624.91, F.S.; Commission on Hurricane Loss Projection Methodology under s. 627.0628, F.S.; Constitution Committee and Board of Governors of Insurance Exchange under s. 629.401, F.S.; Board of Governors of Joint Insurance Underwriting Associations under s. 627.311, F.S.; Long-Term Care Interagency Advisory Council under s. 430.710, F.S.; Board of Governors of Patient's Compensation Fund under s. 766.103, F.S.; Public Depository Advisory Committee under s. 280.05, F.S.; Board of Governors of Residential Property and Casualty Joint Underwriting Association under s. 627.351, F.S.; Risk Underwriting Committee under s. 627.351, F.S.; Small Employer Health Benefit Plan Committee under s. 627.6699, F.S.; Small Employer Health Reinsurance Program Board of Directors under s. 627.6699, F.S.; Special Disability Trust Fund Privatization Commission under s. 440.49, F.S.; Surplus Lines Service Office Board of Governors under s. 626.921, F.S.; Windstorm Underwriting Association Board of Governors under s. 627.351, F.S.; Commission on the Status of Women under s. 14.24, F.S.; Workers' Compensation Insurance Guaranty Association Board of Directors under s. 631.912, F.S.; Workers' Compensation Insurance Joint Underwriting Plan, Chair, Board of Governors under s. 627.311, F.S.; and the Workers' Compensation Insurance Purchasing Alliance Board under s. 627.992, F.S.

Article IV, s. 4(f) of the State Constitution, provides:

The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.

The Department of Agriculture and Consumer Services is created in s. 20.14, F.S. For the 1999-2000 fiscal year, 3,588.75 FTEs were appropriated. All funds appropriated for the same year for the department total \$284,559,189. The head of the department is designated as the Commissioner of Agriculture. Section 20.14(2), F.S., establishes 12 divisions within the department:

1. Division of Administration.¹²⁹
2. Division of Agricultural Environmental Services.¹³⁰
3. Division of Animal Industry.¹³¹
4. Division of Aquaculture.
5. Division of Consumer Services.¹³²
6. Division of Dairy Industry.¹³³
7. Division of Food Safety.¹³⁴
8. Division of Forestry.¹³⁵

¹²⁹The Division of Administration handles the administrative functions of the department and reports to the Office of the Commissioner. Its responsibilities range from personnel management, employee training, fiscal operations, and budgetary planning to computer technology, telecommunications, purchasing, mail room and print shop operations.

¹³⁰The Division of Agriculture Environmental Services administers various state and federal regulatory programs concerning environmental and consumer service protection issues. These include state mosquito control program coordination, agricultural pesticide regulation, testing and regulation, pest control regulation, and feed, seed, and fertilizer production inspection and testing.

¹³¹The Division of Animal Industry is responsible for preventing, controlling, and eradicating certain infectious or communicable diseases of livestock and other domestic animals.

¹³²The Division of Consumer Services is Florida's clearinghouse for consumer information, protection, and complaints. The division functions as the U.S. Consumer Product Safety Commission's agent in Florida regarding product recalls, inspections and investigations.

¹³³The Division of Dairy Industry enforces laws and rules that regulate standards for milk, milk products, ice cream, and frozen desserts.

¹³⁴The Division of Food Safety permits and inspects food establishments, inspects food products, analyzes food products sold or produced in the state.

¹³⁵The Division of Forestry is responsible for the protection and management of Florida's forests. The division is responsible for mitigating and suppressing wildfires on over 34 million acres of public and private lands.

9. Division of Fruit and Vegetables.¹³⁶
10. Division of Marketing and Development.¹³⁷
11. Division of Plant Industry.¹³⁸
12. Division of Standards.¹³⁹

Chapter 570, F.S., provides the general structure and duties of the department. The department is also charged with a wide range of responsibilities in many other statutes, including such diverse responsibilities as inspecting and regulating public fairs, expositions, and rides, and managing forests on behalf of the state. The department also has responsibilities regarding animals and animal products, and is charged with regulatory responsibilities for fertilizers, food products, and certain food establishments.

Attorney General and the Department of Legal Affairs

Article IV, s. 4(c) of the State Constitution, provides that the Attorney General is the chief state legal officer. The Attorney General, pursuant to ch. 16, F.S., is to appear on behalf of the state in all suits in the courts of appeal in which the state either may be a party to or has an interest. The Attorney General also represents the state in appeals taken from criminal convictions in state and federal courts. The Attorney General has numerous other responsibilities as the chief legal officer of the state, and serves as advisor to the Governor on many legal matters.

Section 20.11, F.S., provides for the creation of the Department of Legal Affairs and designates the Attorney General as the agency head. No divisions are created by law in the department. The budget for FY 1999-2000 provides for 1,002.50 FTEs and appropriates \$120,093,066 in funding for the department.

The department is charged throughout the statutes with various legal responsibilities with respect to the state. A primary responsibility of the department is to answer inquiries submitted by public agencies at both the state and local level. The inquiries are answered in the form of an “opinion” and,

¹³⁶The Division of Fruits and Vegetables administers rules that establish standards, grades, and marketing orders for citrus, limes, avocados, peanuts, and tomatoes.

¹³⁷The Division of Marketing and Development provides foreign and domestic marketing services to Florida agricultural producers, processors, shippers, wholesalers, and retailers.

¹³⁸The Division of Plant Industry works to detect, intercept, and control plant and honeybee pests that threaten Florida’s agricultural and horticultural industries.

¹³⁹The Division of Standards administers laws and rules regulating gasoline, brake fluid, antifreeze, weights and measures, liquefied petroleum gases, and amusement rides.

although they are not binding, the Attorney General opinions are frequently used as the basis for official action.

The Attorney General's Office has the responsibility to prosecute both state and federal antitrust laws. This includes enforcing laws forbidding practices such as price-fixing, bid-rigging and allocating markets. Additionally, the civil rights office within the department investigates and prosecutes civil rights abuses by individuals and governmental agencies. The office accepts complaints concerning discrimination in private clubs, in housing and in public accommodations. It can also investigate some disability accessibility issues as well as retaliatory actions taken against whistle-blowers.

In addition, the Attorney General's Office is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act. The act protects individual consumers and legitimate businesses from various types of illegal conduct in trade or commerce. The department investigates and files civil actions against persons who engage in unfair methods of competition, unfair, unconscionable or deceptive trade practices, including, but not limited to, pyramid schemes, misleading franchise or business opportunities, travel scams, fraudulent telemarketing, and false or misleading advertising.

The criminal appeals section of the department is responsible for representing the state in most appeals of criminal sentences. This is accomplished by attorneys located in offices nearest the state's appellate courts. Currently, the division averages 10,000 active cases a year.

The Bureau of Criminal Justice Programs in the Division of Victim Services and Criminal Justice Programs provides statewide public education and training programs for law enforcement personnel, school resource officers, victim advocates and other interested persons on crime prevention initiatives, school based officer programs, victim advocacy and related criminal justice areas.

The department not only serves as an advocate for crime victims and victim's rights, it also administers a compensation program to ensure financial assistance for innocent victims of crime. As part of its responsibility, the division also notifies victims of the status of any appellate decisions regarding their cases.

The Attorney General's Office also includes the Medicaid Fraud Control Unit, which investigates Medicaid fraud and patient abuse. Further, the department administers the Florida New Motor Vehicle Arbitration Board and the Lemon Law Hotline.

Amendment No. 8

On November 3, 1998, Floridians approved Amendment No. 8 which revised the composition of the Cabinet. The vote was 1,950,311 (55.5%) in favor and

1,562,234 (44.5%) opposed. The amendment, which will not be implemented until January 7, 2003, will:

- ▶ Merge the cabinet offices of the Treasurer and Comptroller into one Chief Financial Officer.
- ▶ Eliminate the Secretary of State from the Cabinet but provides for a custodian of state records who must receive certain filings.
- ▶ Eliminate the Commissioner of Education from the Cabinet but provide for a commissioner who is appointed by the State Board of Education.
- ▶ Reduce cabinet membership to a Chief Financial Officer, Attorney General, and Agriculture Commissioner.
- ▶ Provide that in the event of a tie vote of the Governor and Cabinet, the side on which the Governor votes is to prevail.
- ▶ Change the composition of the State Board of Education from the Governor and Cabinet to a board appointed by the Governor.
- ▶ Define the State Board of Administration, Trustees of the Internal Improvement Trust Fund, and Land Acquisition Fund.
- ▶ Designate the Governor and Cabinet as the head of the Department of Law Enforcement.

Though the amendment will not take effect until January 7, 2003, the provisions will govern qualifying for and the holding of primary elections in 2002.

Legislation Related to Amendment No. 8 in the 1999 Session

In response to the constitutional amendment reorganizing the Cabinet, three bills were filed by Senator Daniel Webster, chair of the Committee on Governmental Oversight and Productivity, during the 1999 regular legislative session. Committee Substitutes were adopted for each original bill and each committee substitute passed out of the Senate unanimously. None of the committee substitutes were taken up by the House of Representatives so the bills did not pass.

Committee Substitute for Senate Bill 2206

Committee Substitute for Senate Bill 2206 by the Committee on Governmental Oversight and Productivity and Senator Webster provided for the dismantling of the current Department of Banking and Finance (DBF) and the creation of the "Office of the Comptroller." This office was to conduct the constitutional duties of the Comptroller. Four divisions of the DBF, the Division of Accounting and Auditing, the Division of Administration, the Division of Information Systems,

and the Division of Financial Investigations, were placed in the Office of the Comptroller.

The committee substitute also renamed the Department of Insurance (DOI) the “Department of Finance, Insurance, Banking and Securities.” Three divisions of the DOI were transferred to the renamed Department of Finance, Insurance, Banking, and Securities: (1) the Division of Banking;¹⁴⁰ (2) the Division of Securities and Investor Protection;¹⁴¹ and (3) the Division of Finance.¹⁴²

The committee substitute made numerous changes to statutory references to the Department of Banking and Finance to reflect the change in name to the “Office of the Comptroller” and the transfer of responsibilities. Additionally, numerous changes to statutory references to the Department of Insurance were made to reflect the name change to the Department of Finance, Insurance, Banking and Insurance, as well as the transfer of responsibilities.

The committee substitute required the Governor, the Comptroller, and the Treasurer to develop a plan to implement the transfer authorized by the act. The plan, as well as a budget, was to have been submitted to the Senate President and the Minority Leader of the Senate, and the Speaker and the Minority Leader of the House of Representatives by July 1, 2000. This portion of the committee substitute was to take effect upon becoming law. The committee substitute, except for the required implementation report, was to have taken effect July 1, 2001.

Committee Substitute for Senate Bill 2208

Committee Substitute for Senate Bill 2208 by the Committee on Governmental Oversight and Productivity and Senator Webster maintained the Commissioner of Education as the head of the Department of Education and provided that the Commissioner of Education was the chief educational officer of the state for elementary and secondary education. The committee substitute, however, circumscribed the role and authority of the Commissioner of Education by transferring some authority to the State Board of Education. The bill provided that charter schools and deregulated public schools were to apply to the State Board of Education, instead of the Commissioner of Education, for waivers from

¹⁴⁰The division consists of the Director’s Office, the Bureaus of International Banking, Financial Institutions-District I, Financial Institutions-District II, and Research, Planning and Staff Development.

¹⁴¹The division consists of the Bureaus of Examinations and Registrations.

¹⁴²The division consists of the Bureaus of Examinations, Financial Staff Programs, Funeral and Cemetery Services.

the Florida School Code. Additionally, the committee substitute provided that the State Board of Education, instead of the Commissioner of Education, approved waivers from the Florida School Code.

The committee substitute also provided that the State Board of Education, instead of the Commissioner of Education, could accept gifts on behalf of the state system of public education. The committee substitute modified s. 240.311(5)(b), F.S., to provide that the Board of Community Colleges should submit its budget to the Governor, instead of through the Commissioner of Education. Additionally, s. 240.417, F.S., was amended to provide that the State Board of Education, in coordination with the Division of Bond Finance, of the State Board of Administration, could determine that certain tuition and registration fees were no longer required as security for revenue bonds. Currently, the Division and the Commissioner of Education make this determination. The committee substitute had an effective date of July 1, 2000.

Committee Substitute for Senate Bill 2142

Committee Substitute for Senate Bill 2142 by the Committee on Governmental Oversight and Productivity and Senator Webster did not significantly revise the duties of the Secretary of State or modify the structure of the current Department of State (DOS). Under the committee substitute, the Secretary of State remained the head of the Department of State, though no statement was made regarding the manner of appointment. Further, the bill did not designate the Secretary of State as the constitutional “custodian of state records.”

The vast majority of the statutory responsibilities of the department remained in place. The one significant change that was made to the DOS was the transfer of the Division of Licensing, minus the games promotions program, to the Department of Business and Professional Regulation. The Division of Licensing consists of three Bureaus: (a) Bureau of License Issuance; (b) Bureau of Regulation and Enforcement; and (c) Bureau of Support Services. Programs within the division include concealed weapons and firearms licensing, game promotions, private investigators, recovery, and security. Responsibility for game promotions was transferred to the Department of Agriculture and Consumer Services.

Working Group, Task Force and Commission

During the 1999 interim, three groups were created to identify the issues resulting from cabinet reorganization and to recommend options to the Legislature. The Comptroller and Treasurer appointed a Working Group on Cabinet Reorganization. Additionally, the Secretary of State appointed a

Constitutional Transition Task Force. Finally, the Commissioner of Education appointed a Blue Ribbon Committee on Educational Governance.

Comptroller and Insurance Commissioner Working Group on Cabinet Reorganization

In May 1999, the Comptroller and Insurance Commissioner and Treasurer appointed an internal working group on cabinet reorganization. The assigned task of the working group was to explore a narrow range of feasible alternatives for the reorganization of constitutional and statutory duties exercised by the Treasurer and Comptroller. The members of the working group were staff of the Department of Insurance and the Department of Banking and Finance.¹⁴³ The working group held workshops in Tallahassee, Orlando and Miami-Dade County.

The working group agreed to five guidelines that would guide the development of organizational structures:

- ▶ One “umbrella agency” for the regulation of banking, insurance, securities, and finance.
- ▶ Reduce administrative overhead.
- ▶ Continue current organizational structures, processes and activities.
- ▶ Leadership responsibility and organizational flexibility.
- ▶ Expansion of the consumer advocate.

The final report of the working group identified three organizational structures that could be considered for reorganizing the constitutional and statutory duties of the Comptroller and Treasurer:

¹⁴³Staff of the Department of Insurance that were assigned to the working group were: Peter Mitchell, Chief of Staff; Jose A. Diez-Arguelles, Director of Policy Analysis and Intergovernmental Relations; David Rodriguez, Assistant to the Chief of Staff; and Jean Whitten, Budget and Strategic Planning Director. Staff of the Department of Banking and Finance that were assigned to the working group were: Art Simon, former State Representative and Director, Division of Banking; Bruce Berger, Director, Division of Administrative Services; Linda Charity, Bureau Chief, Division of Banking; Alisa Goldberg, Financial Control Analyst, Division of Securities/Finance; and Rene Lewis, Senior Cabinet Aide.

COMPTROLLER AND TREASURER WORKING GROUP IDENTIFIED OPTIONS	
OPTION	DESCRIPTION
One Department ("Two into One")	This alternative combines all the constitutional and statutory duties of the Comptroller and the Treasurer in a single agency headed by the Chief Financial Officer.
Two Departments ("Two into Two")	The Constitutional and related functions of the Comptroller and Treasurer are consolidated in a department headed by the Chief Financial Officer. The regulatory and related functions presently assigned to the Comptroller and the Treasurer are combined into a new department. The regulatory department could be headed by a person appointed by the Governor, the Governor and Cabinet, or the members of the State Board of Administration.
Three Departments ("Two into Three")	The constitutional and related functions of the Comptroller and Treasurer are consolidated into one department headed by the Chief Financial Officer. The regulatory and related functions presently assigned to the Comptroller and the Treasurer remain in separate departments.

The report of the working group also identified a number of policy issues relating to alternative organizational structures. These issues were: (1) Umbrella Regulation - whether the regulation of banking, finance, securities and insurance should be combined in one agency; (2) Elected vs. Appointed - whether an elected official should continue to regulate the banking, finance, securities and insurance industries; (3) Stand-alone CFO - whether the Chief Financial Officer should be charged with regulatory responsibilities? The issues that were identified are summarized in the following charts:

UMBRELLA REGULATION	
PROS	CONS
Financial markets no longer recognize insurance, banking, finance and securities as insular industries.	While there is some commingling of issues and products, regulatory activities related to each industry will remain distinct and separate in the foreseeable future.
More effective and efficient consumer protection if DOI and DBF consumer protection activities are merged.	A regulator who is solely responsible for one industry can better regulate each industry.
Businesses that engage in multiple regulated activities would benefit because consistent policies would develop more rapidly.	Individual chosen to lead an umbrella agency would be more knowledgeable of one industry to the detriment of the other industries.

ELECTED VERSUS APPOINTED	
ELECTED	APPOINTED
Citizens wanted to merge all duties, both constitutional and statutory, of the Comptroller and Treasurer, to streamline government.	Citizens wanted the Governor's role to be expanded. The Governor has more power and is made more accountable with appointee.
Maintaining an elected regulator is consisted with Florida's history of having an elected official directly responsible and accountable for regulating financial industries.	No other state has an elected banking regulator and only 12 states elect the insurance regulator.

STAND-ALONE CFO	
PROS	CONS
CFO can focus on constitutional matters, especially as the state moves toward an integrated financial management system for state government.	Regulating financial services industry would interfere with the Chief Financial Officer's ability to perform constitutional duties.

The report of the working group also identified some administrative issues associated with reorganization:

ADMINISTRATIVE ISSUES	
Facilities	DBF and DOI occupy 753,433 square feet of office space. Most space is leased privately or through DMS. Because of the number of outstanding lease agreements, it may take several years after reorganization before employees can be integrated and housed in the same headquarters, if agencies are combined.
Information Technology	<p>The computer staffs of the DBF and DOI have shared electronic financial data for many years. The DOI is now completely dependent on the DBF for its mainframe support, a service that is critical to the Division of Consumer Services, the Bureau of Licensing, and the Bureau of Finance and Support Services. Other small applications in the departments are also supported on the mainframe.</p> <p>Network operating systems, databases, development products, and electronic mail applications used by the DBF and DOI are different, exchange of data is compatible. It will not be necessary to make any major changes to the technical environments in either department in order to accomplish any combination or split in functions. As long as the mainframe applications are supported on one computer, there are no major technical obstacles that would make any combination or split any more technically feasible or affordable than any other option.</p>

The report of the working group also identified a number of other issues related to organizational structure and governance: (1) Minimum qualifications for functional regulators; (2) Delegation of decision-making responsibility; (3) Organizational Flexibility; and (4) Limitations on Campaign Contributions. These issues are identified in the chart below.

ORGANIZATIONAL AND GOVERNANCE ISSUES	
Minimum Qualifications for Functional Regulator	The working group suggested that minimum education and experience qualifications for persons who hold key regulatory positions with respect to insurance, banking, securities and finance, is particularly apt, if final agency action on regulatory matters is exercised by appointed officials.
Delegation of Decision-Making Responsibility	In a proposed umbrella agency, the Legislature could provide for statutory delegation of decision-making responsibility from the agency head to industry-specific regulators in the different functional areas. This decision envisions separate statutory positions of “Insurance Commissioner,” “Securities Commissioner,” and “Banking Superintendent” in a single department under the cognizance of a Secretary or Executive Director who is responsible for overall coordination and administration of the agency. In addition, the Governor and Cabinet, or State Board of Education, could function as an agency head and take final agency action on significant issues, such as approving insurance rates, approving new financial institutions, and taking final enforcement actions.
Organizational Flexibility	For any new agencies created by the Legislature, the working group suggests that the department head should be accorded the same organizational flexibility that is currently granted to the Comptroller.
Limitations on Campaign Contributions	In the event that the Legislature opts for one department, statutory provisions restricting campaign contributions to the Comptroller and Treasurer should be conformed to restrict campaign contributions to the CFO. If the Legislature opts for a separate DOI headed by an elected official other than the CFO, then s. 627.0623, F.S., should be amended accordingly. If the Legislature opts for a “stand-alone” CFO without regulatory responsibilities over the affected industries, then the statutory restrictions on campaign contributions should be repealed.

Department of State Constitutional Transition Task Force

The Secretary of State appointed a Constitutional Transition Task Force in the 1999 legislative interim with eleven members.¹⁴⁴ Two members were

¹⁴⁴Members of the Constitutional Transition Task Force created by the Secretary of State were: former Speaker of the Florida House of Representatives and former President of the Florida Senate Mallory Horne, who was Chair of the task force; Dr. Bob Bradley, Associate Vice President for Research and Director, Institute of Science and Public Affairs, The Florida State University; former Secretary of State George Firestone; State Representative Dennis Jones; former Governor’s General Counsel, Lamar Mathews, Esq.; Senator William Myers; State Representative Bill Posey; former Assistant Secretary of State, David Rancourt; former Assistant Secretary of State and Vice President, University Relations, The Florida State University, Beverly Spencer; Senator Ginny Brown-Waite; and Brian Yablonski, Deputy Director, Governor’s Office of Planning & Budget.

recommended by the Governor,¹⁴⁵ two by the Senate President,¹⁴⁶ and two by the Speaker of the House of Representatives.¹⁴⁷ The organizational meeting of the task force convened July 30, 1999 and the final meeting was held on December 10, 1999.

The purpose of the task force was to analyze various statutory functions of state government, including those currently performed by the Department of State, and to recommend which functions should be performed by the Department of State beginning January 2003, in light of Amendment No. 8.

As of the date of this report, the final report of the Department of State Constitutional Transition Task Force has not been released. The task force made a number of findings after consideration of testimony from the public and of presentations and reports prepared by staff at the direction of the members. Specifically, the draft final report found:

Finding 1. Most state and foreign governments have a “Department of State” and a “Secretary of State.” In fact, these terms are well understood from common usage, both nationally and internationally, and are frequently used in major international treaties.

Finding 2. The Florida Department of State currently operates in a “synergetic” manner, with the activities of one division cooperating with, and dependent upon, the activities of another.¹⁴⁸

Finding 3. The department has been in the forefront of information technology utilization. Examples include the *Sunbiz* web site of the Division

¹⁴⁵The Governor recommended Brian Yablonski and David Rancourt, both of the Executive Office of the Governor.

¹⁴⁶The Senate President recommended Senator William Myers and Senator Ginny Brown-Waite.

¹⁴⁷The Speaker of the House recommended Representative Dennis Jones and Representative Bill Posey.

¹⁴⁸Several examples of this “synergy” include: (a) the various divisions serve as a recognized repository of public records. The Division of Elections keeps all official acts of the governor and legislature, as well as elections records. The Division of Libraries and Information Services serves as the State Records Center and the State Archives. Corporate and business records are maintained by the Division of Corporation; (b) the grant-making process utilized by the Divisions of Library and Information Services, Cultural Affairs and Historical Resources allow for the best practices to be developed and utilized throughout the Department; (c) the international affairs program works hand-in-hand with the Division of Historical Resources in promoting Florida internationally and in developing relations that provide the underpinning for economic development and trade; (d) the extensive use of informational technology throughout the department, especially between the Division of Corporations and the Division of Licensing serves an important cooperative and dependent relationship within the department.

of Corporations, the document management system in place at the Division of Licensing, and the real-time election results and the campaign contribution reports of candidates maintained on-line by the Division of Elections. Any transfers of functions away from the department might involved major expenditures for equipment, computer software and personnel, depending upon where such functions were being transferred.

Finding 4. Florida's Department of State compares favorably with those similar roles performed by the United States Department of State, where applicable. There is an important role for the department in the area of international affairs, especially as it may impact the development and maintenance of international relations to lay the groundwork for economic development and foreign trade. That role should be strengthened and emphasized in the Department's Mission Statement.

Finding 5. The various functions currently being undertaken by both the Executive Office of Governor and the Department of State for the commissioning of notaries public is confusing to the public and should be placed under the jurisdiction of one office or the other. The Task Force considered two alternatives and chose the model in which all functions would be under the jurisdiction of the Department of State (appointment, processing of applications and commissioner, and notary education). The alternative would leave appointment prerogative with the Governor but transfer the educational responsibilities to the Department of State.

Finding 6. The Division of Licensing should remain part of the Department of State, and the firearms licensure programs currently performed by that division should not be transferred to the Florida Department of Law Enforcement or to the Department of Business and Professional Regulation. The former agency does not appear to have sufficient technology to continue the strong enforcement currently provided by the department, and the latter agency may have potentially conflicting regulatory responsibilities in these areas. Much of the public testimony presented to the task force was directed to and in support of this recommendation.

Finding 7. The privatization of public records and archives has only been recently undertaken by one state. There do not appear to be any advantages to converting away from public management of records and archives at the present time, while the effects of such conversion on the maintenance of public access are unknown.

Finding 8. The educational "linkage institutes," currently administered under the Department of Education, could be better utilized and strengthened if transferred to the Department of State, Office of International Affairs.

Based upon the foregoing findings, the draft final report of the task force made the following recommendations.

SECRETARY OF STATE CONSTITUTIONAL TRANSITION TASK FORCE RECOMMENDATIONS	
RECOMMENDATION	RATIONALE
There should continue to be a Department of State.	Revision 8 to the state constitution, as approved in November 1998, only removed the secretary of state as a voting member of the cabinet, in the name of "cabinet reform." There is nothing about the wording or history of this amendment that can be reasonably construed as an abolition of the department itself. In addition, this is a commonly used and understood term in the general public and international community.
The head of the Department of State should be known as the <i>Secretary of State</i> .	This is the name of the head of the Department of State in almost all of the other states, and is the most commonly understood title among foreign nations with whom the United States maintains diplomatic relations.
The Secretary of State should be appointed.	While Revision 8 itself does not prevent the election of a department head, other existing constitutional provisions probably do so unless the department head is one of the enumerated ones.
The Governor should make the appointment of the Secretary of State.	While Revision 8 itself did not address the manner of appointing the head of the Department of State, a frequently stated reason in support of its passage was a greater empowerment of the office of the Governor. An appointment by the Governor is consistent with this goal.
The appointment of the Secretary should be subject to Senate confirmation.	The appointment of all other department heads requires confirmation by the Senate.
Those functions in the Executive Office of the Governor related to commissioning of notaries functions should be transferred to Department of State.	Responsibilities for various functions related to the commissioning of notaries are divided between the Executive Office of the Governor and the Department of State and would be administered more efficiently if only one entity were responsible.
Regulation of sweepstakes should be transferred to the Department of Agriculture and Consumer Services.	The Department of Agriculture and Consumer Services already performs most of the statutory direct consumer protection enforcement functions. As an alternative, the Department of State should contractually out source this function.

Filings of financial disclosure by public officials should be transferred to the Ethics Commission.	The Ethics Commission already has the enforcement procedures and personnel to respond to any non-compliance. Currently, duties pass back and forth between the two entities, with the Ethics Commission preparing the forms for compliance and developing a list of all persons required to file financial disclosure. The Division of Elections' duties include mailing the forms, receiving them for filing, and preparing for the Ethics Commission a list of those who have failed to file the required disclosures. The system would be more efficient and effective if the Ethics Commission implemented the entire procedure.
Linkage institutes in the Department of Education should be transferred to the Department of State's Office of International Affairs.	These statutory links between some of Florida's public post-secondary educational institutions and various "favorite" nations have not been operating effectively, if at all, and can be better utilized as part of the department's increased role in international affairs.
With the enhancements, transfers and technical changes recommended, the Department of State should continue to perform its existing functions.	Recommended Enhancements Include: <ul style="list-style-type: none">- Strengthening the department's role in international affairs.- Transferring provisions in ch. 617, F.S., relating to homeowner associations, because the Division of Corporations has nothing to do with enforcement of the provisions.- Eliminating duplication in retention schedules for public records.- Codifying the Museum Advisory Council.- Making nomination procedures for the "Great Floridians" program consistent.

Blue Ribbon Committee on Educational Governance

The Commissioner of Education appointed a Blue Ribbon Committee on Educational Governance during the 1999 legislative interim. Thirty-five members were appointed to the committee.¹⁴⁹ The organizational meeting of the committee was held September 27 and 28, 1999, in Tallahassee, Florida. Meetings were scheduled for October 29, 1999, in Tampa, Florida; November 29 and 30, 1999, in Boca Raton, Florida; and January 18 and 19, 2000, in Tallahassee, Florida. As of the date of this report, the Blue Ribbon Committee on Educational Governance has not released its report.

Constitutional Issues Affecting Cabinet Reorganization

The legislative power is inherent in the Legislature. The State Constitution does not grant legislative power to the Legislature, but sets limits on that power.¹⁵⁰ As a result, the Legislature has a wide range of discretion in its choice of the means by which it determines to enhance the public good¹⁵¹ and in the measures necessary for its achievement.¹⁵² If a constitutional limitation does not exist, legislative discretion is the sole brake on the enactment of legislation.¹⁵³

Under the constitutional amendment, the status of four departments that are headed by cabinet officers must be decided and, assuming the Legislature

¹⁴⁹Membership on the Blue Ribbon Committee on Educational Governance included: David Armstrong, Executive Director, Community College System; Lucille Casey; Senator Anna Cowin (represented by Kyleen Fischer); Mimi Hardman; Patrick Heffernan, Floridians for School Choice; Stephanie King, 2000 Florida Teacher of the Year; Alice Bennett; Bill Cramer, Tommy Thomas Chevrolet; Sandra Fradd, Univ. of Miami, School of Education; George Haynie, Deputy Comm. of Education; Kathy Hoffman; John Kirtley; John Carvelli; former Senator Charlie Crist, Deputy Secretary, Dept. of Business and Professional Regulation; Nat Glover, Sheriff Duval Co.; Tom Healy, State University System; Marilyn Evans-Jones; Philip Lewis; Representative Evelyn Lynn; Phil Morgaman, The Insurance Group; Representative Bill Posey; Penny Ralston, Florida State University; Alex Sink, Nations Bank; Mercedes Toural; Jarl T. Young; Stevan McCrory; Robert A Morris; Bill Proctor, Executive Director, Postsecondary Ed. Planning Commission; Phoebe Raulerson; Carmen Sorondo; Senator Daniel Webster (represented by Kathleen Mears); Carlos Migoya, First Union National Bank; Steve Permuth, Univ. of S. Florida; Sherry Plymale; Matty Rodriguez-Walling, Miami-Dade County Schools; Albert Thomas; John Winn, Education Policy Director, EOG; Tom Jandris, ECS.

¹⁵⁰*State ex rel. Collier Land Inv. Corp. v. Dickinson*, 188 So.2d 781 (1966).

¹⁵¹*Horsemen's Benev. and Protective Ass'n, Florida Division v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 397 So.2d 692 (1981).

¹⁵²*Fraternal Order of Police, Metropolitan Dade County, Lodge No. 6 v. Department of State*, 392 So.2d 1296 (1980).

¹⁵³*State v. Board of Public Instruction for Dade County*, 126 Fla. 142, 170 So. 602 (Fla. 1936).

determines to maintain all or some of these departments, the identity of their agency heads must be resolved. While the Legislature has a great deal of discretion in reorganizing state government, there are a number of constitutional requirements it must consider in the process. These requirements determine the number of departments that are permissible, affect the powers that can be delegated to executive agencies, and limit the available options for agency heads.

Number of Departments

The number of departments in Florida is constitutionally-limited. Article IV, s. 6 of the State Constitution, states in part:

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, *exclusive* of those specifically provided for or authorized in this constitution [*emphasis added*].

The term *department* is not defined in the State Constitution, but is defined statutorily. Section 20.04(1), F.S., defines *department* to mean “. . . the principle administrative unit of the executive branch.” There are currently 24 entities that are specifically designated as departments in the *Florida Statutes*.

24 DESIGNATED DEPARTMENTS	
DEPARTMENT	STATUTE CREATING
Agriculture and Consumer Services	Section 20.14, F.S.
Banking and Finance	Section 20.12, F.S.
Business and Professional Regulation	Section 20.165, F.S.
Children and Family Services	Section 20.19, F.S.
Citrus	Section 20.29, F.S.
Community Affairs	Section 20.18, F.S.
Corrections	Section 20.315, F.S.
Education	Section 20.15, F.S.
Elderly Affairs (in State Constitution)	Section 20.41, F.S.
Environmental Protection	Section 20.255, F.S.
Health	Section 20.43, F.S.
Highway Safety and Motor Vehicles	Section 20.24, F.S.
Insurance	Section 20.13, F.S.

Juvenile Justice	Section 20.316, F.S.
Labor and Employment Security	Section 20.171, F.S.
Law Enforcement	Section 20.201, F.S.
Legal Affairs	Section 20.11, F.S.
Lottery	Section 20.17, F.S.
Management Services	Section 20.22, F.S.
Military Affairs	Section 250.05, F.S.
Revenue	Section 20.21, F.S.
State	Section 20.10, F.S.
Transportation	Section 20.23, F.S.
Veterans' Affairs (in State Constitution)	Section 20.37, F.S.

While there are 24 entities that are statutorily-designated as departments, there is, nevertheless, some debate regarding the exact number of departments that exist because of the wording of the constitutional limitation and because of the definitional requirements of ch. 20, F.S. Historically, there has been an issue regarding whether it is a *department* that is created or authorized in the State Constitution that does not need to be counted toward the authorized 25 departments or whether it is a *function* that is authorized or created that does not need to be counted. The issue is further complicated by the placement in departments of independent entities that themselves have the characteristics of departments. Case law on the subject is limited.¹⁵⁴

Given the constitutional language, the limitation on the number of executive departments can be broadly construed as exempting any executive entity created for a constitutionally authorized function or more narrowly construed as exempting only an entity which is specifically authorized by the constitution. As explained in the Notes to the 1968 Revision to the State Constitution contained in the Florida Statutes Annotated:

Excluded from organization into the twenty-five (or less) departments are those *functions* or those *departments* specifically provided for or authorized

¹⁵⁴Over the years, the Attorney General has issued a number of formal opinions concerning the number of departments within the executive branch, exclusive of those in the State Constitution. See, AGO 69-11; AGO 72-153; and AGO 74-291. These opinions do not provide a current number of departments. Further, the opinion of the Attorney General is not binding on the courts, but is persuasive only. *Leadership Housing, Inc. v. Department of Revenue*, 336 So.2d 1239 (Fla. 4th DCA 1976); *Beverly v. Division of Bev. of Dept. of Business Regulation*, 282 So.2d 657, 660 (Fla. 1st DCA 1973).

in the Constitution. The question as to whether it is *functions* or *departments* which are excluded may be of some importance. The structure of the first sentence of this section technically excluded *functions*, as the subject of the sentence, from the requirements of the section. Since there are many *functions* provided in the Constitution and no departments (unless the Game and Fresh Water Fish Commission and the Board of Administration, for example, are to be considered *departments*), it can be reasoned that the Constitution was intended to allow exclusion from organization into departments only those *functions* specifically provided or authorized in the new Constitution. *This is unclear and the Governmental Organization Act of 1969 did not resolve the question.*

A narrower approach was examined in a Senate interim project report entitled, *A Review of SS. 20.02-20.05 and 20.06, F.S., Relating to the Organizational Structure of the Executive Branch of State Government*,¹⁵⁵ in which it was stated:

If the constitution were meant to exempt departments from the cap of 25 departments if the function is provided for or authorized in the constitution, departments created with reference to a constitutionally-authorized function would not be subject to the limitation. Thus, departments such as the Lottery (created statutorily; constitution provides, at Art. X, s. 15, "Lotteries may be operated by the state . . .") and the Department of Military Affairs (created statutorily; constitution provides, at Art. X, s. 2, for a militia) would not be calculated among the departments subject to the numerical limitation. . . . This is likely not the interpretation that courts would give the constitutional limitation, however, as the Supreme Court has stated:

The Constitution of 1968 must be given effect according to its plain meaning and what the people must have understood it to mean at the time they adopted it.

In re Advisory Opinion to the Governor, 223 So.2d 35 (Fla. 1969), published for public distribution prior to the 1968 ratification vote, described the provision thus:

This entirely new provision would reduce the number of executive departments to no more than 25 plus those specifically provided for in the Constitution. . . .

¹⁵⁵ Staff of the Senate Committee on Governmental Operations, Senator Robert T. Harden, Chairman, January 1993, pp. 41-42.

The interim project report concluded that since the term *functions* was not even mentioned in this opinion, it is strongly arguable that it is *departments* that must be specifically constitutionally authorized in order not to be included within the constitutional numerical limitation. The report further noted that the Governmental Reorganization Act of 1969, at the time of its enactment, “. . . was considered to have created 22 of the 25 authorized departments.”¹⁵⁶ Chapter 94-235, L.O.F., which was the result of this interim project report, modified s. 20.02(2), F.S., to clarify that the more conservative construction of Art. IV, s. 6 of the State Constitution, applies. Section 20.02(2), F.S., now states:

Within constitutional limitations, *the agencies*¹⁵⁷ *that compose the executive branch must be consolidated into no more than 25 departments*, exclusive of those specifically provided for or authorized in the State Constitution, consistent with executive capacity to administer effectively at all levels. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness as intended by s. 6, Art. IV of the State Constitution [*emphasis added*].

The State Constitution presently authorizes: (1) the Department of Elderly Affairs¹⁵⁸; (2) the Department of Veterans Affairs¹⁵⁹; (3) the Parole Commission;¹⁶⁰ (4) the Fish and Wildlife Conservation Commission;¹⁶¹ and (5)

¹⁵⁶The departments established in the 1969 law are as follows: (1) Department of State; (2) Department of Legal Affairs; (3) Department of Banking and Finance; (4) Department of Insurance; (5) Department of Agriculture and Consumer Services; (6) Department of Education; (7) Department of Business Regulation; (8) Department of Commerce; (9) Department of Community Affairs; (10) Department of Health and Rehabilitative Services; (11) Department of Law Enforcement; (12) Department of Revenue; (13) Department of General Services; (14) Department of Transportation; (15) Department of Highway Safety and Motor Vehicles; (16) Department of Natural Resources; (17) Department of Air and Water Pollution Control; (18) Board of Trustees of the Internal Improvement Trust Fund; (19) Department of Citrus; (20) Department of Occupational and Professional Regulation; (21) Department of Administration; (22) Probation and Parole Commission. *See, A Review of ss. 20.02-20.05 and 20.06, F.S., Relating to the Organizational Structure of the Executive Branch of State Government*, by staff of the Senate Committee on Governmental Operations, Senator Robert T. Harden, Chairman, January 1993.

¹⁵⁷Section 20.03, F.S., defines *agency* to mean, as the context requires, an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government.

¹⁵⁸Article IV, s. 12 of the State Constitution.

¹⁵⁹Article IV, s. 11 of the State Constitution.

¹⁶⁰Article IV, s. 8(c) of the State Constitution.

¹⁶¹Article IV, s. 9 of the State Constitution.

the State Board of Administration.¹⁶² As such, these entities should not be calculated in the limited number of departments.

The Legislature has created a number of independent agencies within departments. The issue of whether such an independent agency within a department is subject to the limitation of 25 executive departments has been addressed by the courts. In *Agency for Health Care Administration v. Associated Industries of Florida, Inc.*,¹⁶³ Associated Industries of Florida (AIF) argued that the Agency for Health Care Administration (AHCA) constituted a 26th executive department in violation of the Constitution.¹⁶⁴ According to AIF, even though AHCA was statutorily placed within the Department of Professional Regulation (DPR), it effectively operated as a department because it reported directly to the governor and was not subject to DPR's supervision.¹⁶⁵

Without addressing the number of constitutional departments which exist in this state, the Supreme Court held that it is within the Legislature's prerogative to create an agency within a department which reports directly to the governor *so long as that agency is functionally related to the department* in which it is placed.¹⁶⁶ The Court explained that AHCA's responsibilities to regulate state health care activities were similar to DPR's functions, and thus, AHCA was not a department subject to the limitation of 25.¹⁶⁷ The Court cautioned, however, that the Legislature is not free to create numerous independent agencies within departments with the result that these departments would ". . . resemble hodgepodes."¹⁶⁸

A number of agencies, commissions, authorities, and divisions have been identified which are placed within a department, but which operate

¹⁶²Article XII, s. 9 of the State Constitution.

¹⁶³678 So.2d 1239 (Fla. 1996).

¹⁶⁴*Id.* at 1246.

¹⁶⁵*Id.* at 1247.

¹⁶⁶*Id.* at 1248

¹⁶⁷*Id.*

¹⁶⁸*Id.*

independently of it.¹⁶⁹ Under the Supreme Court's holding in *Agency for Health Care Administration*, discussed *supra*, these entities do not have to be calculated in the limited number of departments so long as each entity's functions are related to the department in which it was placed.

Two executive entities are created by statute which are not created as, or connected to, departments, but which are organized and function as principal administrative units of the executive branch. As a result, they could be arguably counted as departments. The first agency in this category is the Executive Office of the Governor (EOG). The EOG was created by the Legislature and it possesses the characteristics of a department outlined by ch. 20, F.S.¹⁷⁰ The EOG is composed of a variety of administrative sub-units under the direction of the Governor, consistent with the requirement for the supervision of departments which is also provided in Art. IV, s. 6 of the State Constitution.¹⁷¹ Additionally, the EOG performs a variety of executive functions that are not constitutional duties.

It might also be argued that the Board of Trustees of the Internal Improvement Trust Fund¹⁷² should be counted as a department, though less persuasively. The board, while performing executive functions, has no administrative units underneath it and further, it is arguably adjunct to the Department of Environmental Protection.

¹⁶⁹(1) Agency for Health Care Administration - s. 20.42, F.S.; (2) Correctional Medical Authority - s. 945.601, F.S.; (3) Division of Administrative Hearings - s. 20.22, F.S.; (4) Division of Bond Finance - s. 215.62, F.S.; (5) Division of Retirement - s. 20.22, F.S.; (6) Education Practices Commission - s. 231.261, F.S.; (7) Florida Commission on Human Relations - s. 760.03, F.S.; (8) Florida Elections Commission - s. 106.24, F.S.; (9) Information Resource Commission - s. 216.235, F.S.; (10) Public Employees Relations Commission - s. 20.171, F.S.; (11) Division of Community Colleges; and (12) Division of Universities.

¹⁷⁰The Executive Office of the Governor (EOG) was created by ch. 79-190, L.O.F. That chapter transferred the Division of Planning and Budgeting and the Administration Commission from the Department of Administration, as well as other offices and commissions, to the newly-created EOG. Statutory authorization for the EOG is found in s. 14.201, F.S.

¹⁷¹Section 14.2015, F.S., places the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor (EOG); s. 14.23(2), F.S., creates the Office of State-Federal Relations within the EOG; s. 14.25, F.S., creates within the EOG the Florida State Commission on Hispanic Affairs, and the statute creating it states that the commission “. . . is not an executive department or agency for purposes of assignment under s. 6 of Article IV of the State Constitution, nor is it an agency within the legislative intent of chapter 216 or chapter 287;” s. 14.26, F.S., creates the Citizen's Assistance Office within the EOG; s. 14.27, F.S., creates the Florida Commission on African-American Affairs in the EOG; the Florida Commission on Community Services is created within the EOG by s. 14.29, F.S.; and s. 14.32, F.S., places the Office of Chief Inspector General within the EOG.

¹⁷²Section 253.02, F.S.

In summary, applying the analyses of the constitutional limitation on executive departments discussed above, it appears that currently there are at least 22 departments¹⁷³ that count toward the constitutional limit of 25, though it is possible that the number could be as high as 24 departments. The State Constitution presently authorizes five entities that should not count toward the limit of 25¹⁷⁴ leaving 22 departments which do count. Further, under the Supreme Court's holding in *Agency for Health Care Administration*, discussed *supra*, those questionable entities which are housed in a department, but which operate independently of it,¹⁷⁵ arguably should not be counted so long as their functions are related to the department in which they are placed.¹⁷⁶ Finally, two questionable entities, the Executive Office of the Governor and the Board of Trustees of the Internal Improvement Trust Fund, might be considered as departments, thereby potentially raising the number to 24. It is impossible, however, to conclusively determine the precise number of departments given the constitutional ambiguity in this area and the lack of judicial construction.

Heads of Departments, Qualifications, Manner of Appointment, and Confirmation

In addition to limiting the number of departments in the executive branch that are permissible, the State Constitution places limitations on who may head a department, what qualifications the Legislature may impose on those agency heads, and whether they can be confirmed. Article IV, s. 6 of the State Constitution, states in part:

¹⁷³(1) Department of Agriculture and Consumer Services; (2) Department of Banking and Finance; (3) Department of Business and Professional Regulation; (4) Department of Children and Family Services; (5) Department of Citrus; (6) Department of Community Affairs; (7) Department of Corrections; (8) Department of Education; (9) Department of Environmental Protection; (10) Department of Health; (11) Department of Highway Safety and Motor Vehicles; (12) Department of Insurance; (13) Department of Juvenile Justice; (14) Department of Labor and Employment Security; (15) Department of Law Enforcement; (16) Department of Legal Affairs; (17) Department of Lottery; (18) Department of Military Affairs; (19) Department of Management Services; (20) Department of Revenue; (21) Department of State; and (22) Department of Transportation.

¹⁷⁴(1) the Department of Elderly Affairs; (2) the Department of Veterans Affairs; (3) the Parole Commission; (4) the Fish and Wildlife Conservation Commission; and (5) the State Board of Administration.

¹⁷⁵(1) Agency for Health Care Administration - s. 20.42, F.S.; (2) Correctional Medical Authority - s. 945.601, F.S.; (3) Division of Administrative Hearings - s. 20.22, F.S.; (4) Division of Bond Finance - s. 215.62, F.S.; (5) Division of Retirement - s. 20.22, F.S.; (6) Education Practices Commission - s. 231.261, F.S.; (7) Florida Commission on Human Relations - s. 760.03, F.S.; (8) Florida Elections Commission - s. 106.24, F.S.; (9) Information Resource Commission - s. 216.235, F.S.; and (10) Public Employees Relations Commission - s. 20.171, F.S.

¹⁷⁶A functional analysis of each independent agency that is placed in a department was not performed.

... The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:

(a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.

Who May Head a Department - Article IV, s. 6 of the State Constitution, prescribes who is authorized to head a department, thereby limiting the authority of the Legislature to designate a department head to those persons or entities specified. The provision permits certain constitutional officers, a collegial body of constitutional officers, a statutory collegial body, or a statutory officer to head a department. The authorized constitutional officers that may head a department are limited to the Governor, the Lieutenant Governor, or a member of the Cabinet. The collegial body of constitutional officers that is authorized by the State Constitution to head a department is the Governor and Cabinet. Another collegial body that is authorized to head a department is a statutorily-created board composed of gubernatorial appointees. Finally, the State Constitution authorizes a statutory officer appointed by the Governor to head a department.

CURRENTLY AUTHORIZED DEPARTMENT HEADS			
Constitutional		Statutory	
Officer	Collegial Body	Officer	Collegial Body
<ul style="list-style-type: none"> - Governor - Lt. Governor - Attorney General - Commissioner of Agriculture - Commissioner of Education - Comptroller - Secretary of State - Treasurer 	The Governor and Cabinet	Secretary appointed by the Governor	Board whose members are appointed by the Governor

It should be noted that the constitutional limitations contained in Art. IV, s. 6 of the State Constitution, apply only to executive branch entities. If the Legislature wished to create an entity outside of the executive branch, such as the Public Service Commission, the limitations on who could head that entity would not apply. Further, the Legislature does not appear to be prohibited from creating an elective statewide office as there is not a constitutional provision prohibiting the Legislature from creating such an office, though that officer could not head an *executive* department under the limits established by Art. IV, s. 6 of the State

Constitution.¹⁷⁷ If such an entity performed primarily executive functions, however, constitutional questions could be raised. Article II, s. 3 of the State Constitution, provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches *unless expressly provided herein [emphasis added]*.

Under Florida's form of government, no branch of state government can take upon itself powers that properly inhere in another branch.¹⁷⁸ In other words, the legislative power of the state is vested in the Legislature,¹⁷⁹ the executive power is vested in the Governor,¹⁸⁰ and the judicial power is vested in the supreme courts, district courts of appeal, circuit courts and county courts.¹⁸¹ The Legislature has elaborated on this requirement in s. 20.02, F.S., which states:

The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

The separation of powers, however, does not mean that every governmental activity is classified as belonging exclusively to a single branch of government. The prohibition is directed only at those powers which belong exclusively to a

¹⁷⁷In an informal opinion issued on March 13, 1999, by the Attorney General to the Secretary of State, the Attorney General's office concluded that . . . [t]here does not appear to be any constitutional provision prohibiting the Legislature from creating a statewide office of secretary of state and making such position elective, provided such term of office does not exceed four years. *Such an elective position, however, may not head one of the executive departments (emphasis added)*.

¹⁷⁸*State v. Ashley*, 701 So.2d 338 (1997).

¹⁷⁹Article II, s. 1 of the State Constitution.

¹⁸⁰Article IV, s. 1(a) of the State Constitution.

¹⁸¹Article V, s. 1 of the State Constitution.

single branch of government.¹⁸² If a power is exclusive to one branch of government and is therefore subject to the separation of powers clause, any exercise of that power by another branch is unconstitutional. For example, the Florida Supreme Court has found that the clemency process is strictly a function of the executive branch that is derived solely from the State Constitution. Thus, the Legislature is not authorized by statute to preempt or overrule clemency rules without violating the separation of powers doctrine.¹⁸³ Similarly, it is an encroachment upon the power of the Legislature, and a violation of the separation of powers doctrine, to attempt to give an administrative agency the power to define a crime.¹⁸⁴

On the other hand, if a power is not exclusive to one branch, exercise of the nonexclusive power is not unconstitutional.¹⁸⁵ The exclusive powers of the three branches of government are generally not delineated in the Constitution nor in statutes, but are determined by considering the language and intent of the Constitution, as well as by considering history, nature, powers, limitations, and purposes of our form of government.¹⁸⁶ In other words, a non-exclusive power may be exercised by another branch of government. For example, the Legislature created the Public Service Commission in 1887¹⁸⁷ and classified it as an, “. . . arm of the legislative branch of government.” The Commission’s primary function of rate-making is a legislative branch power,¹⁸⁸ but it does not merely exercise legislative powers. Rather, it also performs quasi-judicial functions¹⁸⁹ such as license revocation and adjudicatory proceedings,¹⁹⁰ and executive

¹⁸²*Simms v. State, Dept. of Health & Rehabilitative Services*, 641 So.2d 957 (3rd DCA 1994), review denied 649 So.2d 870.

¹⁸³*Parole Com’n v. Lockett*, 620 So.2d 153 (Fla. 1993).

¹⁸⁴*B.H. v. State*, 645 So.2d 987, 46 A.L.R. 5th 877 (1994), certiorari denied 115 S.Ct. 2559, 515 U.S. 1132, 132 L.Ed.2d 812.

¹⁸⁵*Ibid.*

¹⁸⁶*Ibid.*

¹⁸⁷When the Commission was created in 1887, it was known as the Florida Railroad Commission. Through the years, the name of the agency was changed several times until it finally became known as the Public Service Commission. *In re Advisory Opinion to the Governor*, 223 So.2d 335 (Fla. 1969).

¹⁸⁸*Chiles v. Public Service Com’n Nominating Council*, 573 So.2d 829 (Fla. 1991).

¹⁸⁹*Cherry Communications, Inc. v. Deason*, 652 So.2d 803 (Fla. 1995).

¹⁹⁰*Southern Bell Tel. and Tel. Co. v. Florida Public Service Com’n*, 453 So.2d 780 (Fla. 1984).

functions such as the enforcement of laws.¹⁹¹ Despite this breath of authority, the Supreme Court has repeatedly held the Commission is a properly created legislative branch entity which is exclusively controlled by the Legislature.¹⁹²

In summary, as long as a legislative entity does not exercise a power belonging exclusively to the executive or judicial branch, the entity may be classified as part of the legislative branch. In such an instance, the Legislature may provide for the election or appointment of the entity's officers in any manner it desires.

Qualifications - Under Art. IV, s. 6 of the State Constitution, cabinet officers and statutory officers who are appointed by the Governor may be designated by the Legislature as department heads. Cabinet officers are constitutional officers and gubernatorial appointees are statutory officers. Determining whether an officer is a constitutional or statutory officer is important as the status of the officer affects the ability of the Legislature to establish qualifications for the position.

The Florida Supreme Court has established two rules regarding the establishment of qualifications for officers. First, where the State Constitution specifies qualifications for a constitutional office, the Legislature may not add or otherwise change these requirements, unless expressly or impliedly authorized to do so by the State Constitution.¹⁹³ Second, the Legislature may statutorily require any qualifications it desires for statutorily-created, non-constitutional offices.¹⁹⁴

Article IV, s. 5(b) of the State Constitution, establishes specific, but limited, qualifications for cabinet officers.¹⁹⁵ Only the Attorney General is required to meet professional qualifications.¹⁹⁶ As the State Constitution designates specific qualifications for cabinet officers, this operates as an implied restriction on the

¹⁹¹*Chiles v. Public Service Com'n Nominating Council*, 573 So.2d 829 (Fla. 1991).

¹⁹²*In re Advisory Opinion to the Governor*, 223 So.2d 35 (Fla. 1969); *Commission on Ethics v. Sullivan*, 489 So.2d 10 (Fla. 1986); *Chiles v. Public Service Com'n Nominating Council*, 573 So.2d 829 (Fla. 1991).

¹⁹³*Ibid*; *State v. Ex rel. Askew v. Thomas*, 293 So.2d 40 (Fla. 1974).

¹⁹⁴*State ex rel. Landis v. Ward*, 158 So.2d 273 (Fla. 1934).

¹⁹⁵A cabinet officer must be an elector not less than thirty years of age who has resided in the state for the preceding seven years.

¹⁹⁶Article IV, s. 5(b) of the State Constitution, requires the Attorney General to have been a member of the Florida Bar for the preceding five years.

power of the Legislature to impose additional or different qualifications.¹⁹⁷ As a result, when the Legislature designates the Governor, the Lieutenant Governor, or a cabinet officer as a department head, it may not establish qualifications for that statutory office.

Far more flexibility is provided to the Legislature for establishing qualifications for purely statutory officers. The Legislature may require any qualifications it desires for statutorily-created, non-constitutional offices.¹⁹⁸ In the case of *Robinson v. State of Florida, Dry Cleaning & Laundry Board*,¹⁹⁹ the Florida Supreme Court found that a statute requiring three board members to have experience in the laundry business and three board members to have dry cleaning experience, did not unduly restrict the appointment power. In keeping with this authority, the Legislature has required the 12 members of the Citrus Commission, which heads the Department of Citrus, to be

. . . practical citrus fruit persons who are resident citizens of the state, each of whom is and has been actively engaged in growing, growing and shipping, or growing and processing of citrus fruit in the state for a period of at least 5 years immediately prior to appointment to the said commission and has, during said period, derived a major portion of her or his income therefrom or, during said time, has been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which has, during said time, derived the major portion of its income from the growing, growing and shipping, or growing and processing of citrus fruit.

Manner of Appointment - The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers. In *Jones v. Chiles*,²⁰⁰ the Florida Supreme Court refused to require the Governor to reappoint a judge of compensation claims because the reappointment process established by the Legislature provided the Governor with no choice whether to reappoint. Under that process, the statewide nominating commission reviewed sitting judges of compensation claims and, by majority vote determined whether to retain them. Once the commission voted to retain a judge, the Governor had to reappoint the judge. The court noted that the Governor's role in the process was purely ministerial and that the ". . . procedure

¹⁹⁷*Thomas v. State*, 58 So.2d 173 (Fla. 1952).

¹⁹⁸*State ex rel. Landis v. Ward*, 158 So.2d 273 (Fla. 1934).

¹⁹⁹194 So. 269 (Fla. 1940).

²⁰⁰638 So.2d 48 (Fla. 1994).

effectively eliminates the power of the Governor to reappoint compensation claims judges as officers of the executive branch.” The court further stated:

As the chief executive officer in whom the supreme executive power is vested, the Governor has direct supervision over all executive departments unless the legislature places that supervision in the hands of one of the following other executive officers: the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor. Inherent in that direct supervisory authority is the power to appoint executive officers to public office.

The court held that the process violated the separation of powers and was invalid because it unconstitutionally encroached on the power of the Governor to appoint or reappoint executive branch officers.

While the ultimate choice of an appointee must rest with the Governor, the Legislature has established processes which limit the choices that are available to the Governor for appointment to a statutory office. For example, the Governor is required to select the head of the Department of Transportation from a list of three nominees forwarded to him by the Florida Transportation Commission.²⁰¹

Confirmation - Determining whether an officer is a constitutional or statutory officer is also important because it affects the ability of the Legislature to confirm that officer. Under Art. IV, s. 6 of the State Constitution, the Legislature may require approval by three members of the Cabinet or Senate confirmation for appointment to or removal from any designated *statutory* office. The State Constitution, however, permits the Legislature to designate constitutional or statutory officers to the statutory office of department head.

Cabinet officers are constitutional officers.²⁰² As cabinet officers are elected by the people, these officers receive the most direct form of confirmation. The statutes that designate cabinet officers as department heads do not require Senate confirmation.²⁰³ The practice of not confirming elected officers who are statutorily designated as agency heads is made explicit in the case of the Lieutenant Governor. Section 20.05(3), F.S., states that

[t]he Governor may assign the Lieutenant Governor, *without Senate confirmation*, the duty of serving as the head of any one department, the

²⁰¹Section 20.23(1)(a)1., F.S.

²⁰²A constitutional office is one created by the State Constitution. *Thomas v. State*, 58 So.2d 173 (Fla. 1952).

²⁰³Sections 20.10, 20.11, 20.12, 20.13, 20.14, and 20.15, F.S.

head of which is a secretary appointed by the Governor, *notwithstanding any qualifications* for appointment as secretary of the department [*emphasis added*].²⁰⁴

As a practical matter, a constitutional prohibition against confirming a cabinet officer who is designated as a department head would not affect the ability of the Legislature to amend the statutory designation.²⁰⁵ In other words, it is within the legislative prerogative to determine who the head of a department will be.²⁰⁶

The State Constitution also permits the Legislature to designate a statutory officer, that is an appointed officer or board, to be a department head.²⁰⁷ Once the Legislature determines that a department head is to be an appointee, the officer or board is appointed by, and serves at the pleasure of, the Governor.²⁰⁸ While the power to appoint an officer or board is in the Governor, the Legislature is authorized to require confirmation by the Senate or the approval of three members of the Cabinet for appointment to or removal from any designated statutory office.²⁰⁹ There is no question that an officer or board appointed by the Governor as a department head falls within the meaning of the phrase *any designated statutory office* and, accordingly, the Legislature has established a general requirement that appointees *must be* confirmed by the Senate.²¹⁰ Additionally, the statutes that create individual departments and designate

²⁰⁴Of the elected constitutional officers listed in Art. IV, s. 6 of the State Constitution, who are authorized choices for agency heads, only the Governor and the Lieutenant Governor do not have departments that are specifically assigned to them by statute.

²⁰⁵The power of creating an office generally includes the power of modifying or abolishing it. Where the office is of legislative creation, the Legislature may, unless prohibited by the Constitution, control, modify or abolish it whenever such a course may seem necessary, expedient, or conducive to the public good. This power may be exercised at any time, even while the office is occupied by a duly elected incumbent. *Jacksonville v. Smoot*, 92 So. 617 (Fla. 1922).

²⁰⁶Such an amendment, like other bills, would be subject to gubernatorial veto, as well as veto override under the State Constitution. Further, under the analysis of Art. IV, s. 6 of the State Constitution, that looks to identified *departments* instead of *functions* to determine the authorized number of departments, stripping a cabinet officer of a department arguably could result in the creation of a new department.

²⁰⁷Article IV, s. 6 of the State Constitution.

²⁰⁸Article IV, s. 1(a) of the State Constitution. See also, *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994), in which the court stated, “[i]nherent in the governor’s direct supervisory authority over all executive departments is the power to appoint officers to public office.”

²⁰⁹Article IV, s. 6 of the State Constitution.

²¹⁰Section 20.05(2), F.S.

secretaries²¹¹ who are not otherwise named in the State Constitution, almost uniformly require confirmation by the Senate.²¹²

While there is no question that the Legislature may require an officer or board appointed by the Governor to be confirmed by the Senate, an issue is raised by the confirmation of executive directors. When the Legislature designates either the Governor and Cabinet or a board as a department head, an executive director is necessary to perform the day-to-day operations of the department and to implement the decisions of the agency head. Even though an executive director may have administrative responsibilities similar to a secretary or have significant powers delegated to him or her by the collegial head, the executive director is not the agency head. As a result, it may be unclear whether the executive director is a statutory officer or a mere employee. This is an issue of some significance as the State Constitution permits the Legislature to require confirmation for appointments to or removal from any designated statutory *office*.²¹³

Case law defining the phrase *any designated statutory office* has not been discovered. Nevertheless, case law relating to dual office holding, as well as provisions of the *Florida Statutes* may help to illuminate the issue. Based upon a statutory review, it is clear that an executive director may be either an officer or an employee. First, the Legislature has defined *executive director* to mean:

... the chief administrative *employee or officer* of a department headed by a board or by the Governor and Cabinet [*emphasis added*].²¹⁴

²¹¹Section 20.03(5), F.S., defines the term secretary to mean an individual who is appointed by the Governor to head a department and who is not otherwise named in the constitution. In other words, a cabinet officer who heads an agency is not a secretary.

²¹²All departments which are headed by secretaries appointed by the Governor have a specific requirement that the Senate confirm the secretary except for the Department of Juvenile Justice. The Department of Military Affairs, while technically headed by the Governor as Commander-in-Chief, is “under the administration of the state Adjutant General” who is appointed by the Governor and confirmed by the Senate under ss. 250.07 and 250.10, F.S. Two departments under the Governor have slightly different appointment procedures. The head of the Department of Transportation is appointed by the Governor from among three persons nominated by the Florida Transportation Commission and is subject to confirmation by the Senate. The head of the Department of Environmental Protection is appointed by the Governor with the concurrence of three or more members of the Cabinet, and is confirmed by the Senate. Additionally, members of the Citrus Commission, a board which is the agency head of the Department of Citrus, must meet specific qualifications, are appointed by the Governor, and confirmed by the Senate.

²¹³Article IV, s. 6 of the State Constitution.

²¹⁴Section 20.03(6), F.S.

Further, other provisions of the *Florida Statutes* distinguish between appointed executive directors who are officers and executive directors who are not. For example, general statutory authority is provided for a department headed by a collegial body to *employ* an executive director who serves at the agency head's pleasure.²¹⁵ The Department of Highway Safety and Motor Vehicles,²¹⁶ the Department of Revenue,²¹⁷ and the State Board of Administration,²¹⁸ rely upon this general authority to employ their executive directors. Numerous statutory references also indicate legislative intent to permit employment of an executive director in each of the three agencies.²¹⁹ One agency, the Department of Citrus, is granted specific authority in statute to *employ* an executive director. Uniformly, the executive directors of these agencies are not required by statute to be confirmed by the Senate.

On the other hand, specific authority is provided to a few collegial agencies to *appoint* an executive director.²²⁰ In all instances where specific authority to appoint, rather than employ, an executive director is provided, Senate confirmation is required. Currently, the Florida Department of Law Enforcement²²¹ and the Department of Veterans Affairs²²² have an executive director who is appointed by the Governor, with the approval of three members of the Cabinet, and confirmed by the Senate. Similarly, the Fish and Wildlife Commission, which is headed by a seven-member commission,²²³ has an appointed executive director who is made subject to Senate confirmation.²²⁴

Thus, by legislative designation, it is apparent that some executive directors are considered to be officers, while others are employees. In addition to the

²¹⁵Section 20.05(1)(g), F.S.

²¹⁶Section 20.24, F.S.

²¹⁷Section 20.21, F.S.

²¹⁸Section 215.44(1), F.S.

²¹⁹See, ss. 325.04, 20.21, 145.10, 193.1145, 215.475, 376.3075, 376.3075, 376.86, 420.509, and 517.1204, F.S.

²²⁰Sections 20.201, 20.37, and 20.331, F.S.

²²¹Section 20.201, F.S.

²²²Section 20.37, F.S.

²²³Art. IV, s. 9 of the State Constitution.

²²⁴Section 20.331(4), F.S.

designation given by the Legislature to a position, however, it is well-established that the duties exercised by an executive director have some bearing on his or her status as an officer or employee. While case law defining the term *office* within the meaning of the constitutional phrase *any designated statutory office* has not been found, the courts have explained the term *office* in other constitutional contexts:

The term ‘office’ implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office; . . . The term embraces the idea of tenure, duration, emolument, and duties, and has respect to a permanent public trust to be exercised in behalf of government, and not a merely transient, occasional, or incidental employment. . . . [E]very ‘office,’ in the constitutional meaning of the term, impl[ies] an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws.²²⁵

Using this principle, which has been referred to as the sovereign powers test,²²⁶ the Court has held that deputy sheriffs are officers for the purpose of the dual office holding prohibition in Art. II, s. 5 of the State Constitution, because they exercise the same sovereign powers granted to the sheriffs which appoint them.²²⁷ Thus, by analogy to the definition of an officer for the purpose of dual office holding, the duties assigned to an executive director also may affect his or her standing as an officer or employee. Therefore, an executive director who has been delegated some portion of the sovereign power may be an officer.

While an executive director is not one of the department heads specifically described in Article IV, s. 6 of the State Constitution, it appears that an executive director could fit within the phrase *any designated statutory office*. In *Jones v. Chiles*,²²⁸ the Florida Supreme Court noted that judges of compensation claims fell under the Workers’ Compensation Division of the Department of Labor and Employment Security, an executive department under the Governor. The court held that judges of compensation claims were executive branch officers. As such, the only restriction that could be placed on the power of the Governor to appoint these officers was Senate confirmation or cabinet approval of the Governor’s choices. By analogy, an executive director, as an officer within a

²²⁵*Robbin v. Brewer*, 236 So.2d 448, 451 (Fla. 4th DCA 1970), quoting *State ex rel. Clyatt v. Hocker*, 22 So. 721 (1897).

²²⁶*Robbin v. Brewer*, 236 So.2d 448 (Fla. 4th DCA 1970).

²²⁷*Blackburn v. Brorein*, 70 So.2d 293 (Fla. 1954).

²²⁸638 So.2d 48 (Fla. 1994).

department, can be confirmed by the Senate or approved by three members of the Cabinet.

This analysis would also comport with the longstanding legislative tradition of confirming some executive directors. In the reorganization of state government which occurred in 1969, the Legislature specifically required that the executive director of the Florida Department of Law Enforcement be confirmed by the Senate. Numerous other executive officers who are not department heads are confirmed by the Senate, as well.²²⁹

Additional Duties Assigned to Cabinet Officers

The State Constitution assigns particular functions to the various cabinet officers. For example, the Attorney General is the chief state legal officer. The office of the statewide prosecutor is established within the office of the Attorney General and has concurrent jurisdiction with state attorneys to prosecute violations of criminal laws that occur in two or more judicial circuits.²³⁰ The Attorney General is also required, as provided in general law, to request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Article IX, s. 3 of the State Constitution.²³¹ Statements regarding the constitutional duties of the other cabinet officers are also contained in the State Constitution.

These constitutional duties are not, however, the exclusive duties of cabinet officers. As noted *supra*, cabinet officers are agency heads of departments that often are delegated a variety of functions. The ability of the Legislature to assign additional functions and duties to cabinet officers and the departments that they head has a long history. As early as 1920, the Florida Supreme Court has recognized this ability:

The Legislature, having all the law-making power of the state that is not withheld by the Constitution, may prescribe duties to be performed by officers expressly provided for by the Constitution, in addition to the duties of those officers that are defined in the Constitution, where not forbidden by the organic law; and the Constitution does not withhold from the Legislature

²²⁹Numerous board members are confirmed by the Senate. For example, members of the Boards of Accountancy, Acupuncture, Architecture and Interior Design, Athletic Training, Auctioneers, Barbers, Black Business Investment Board, Building Code Administrators and Inspectors, Chiropractic Medicine, Clinical Laboratory Personnel, Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, Community Colleges, among many others.

²³⁰Article IV, s. 4 of the State Constitution.

²³¹Article IV, s. 10 of the State Constitution.

the power to prescribe additional duties to be performed by the state treasurer, or others of ‘the administrative officers of the executive department,’ that are not inconsistent with their duties as defined by the Constitution. . . . While, in defining generally the duties of the state treasurer, the Constitution does not include therein ‘such other duties as may be prescribed by law,’ as is done in the case of the other ‘administrative officers of the executive department,’ yet such omission is not an implied limitation upon the power of the Legislature to impose additional administrative duties upon the state treasurer that are not inconsistent with those stated in the Constitution.²³²

While the Legislature is not precluded from assigning additional responsibilities to cabinet officers, there does appear to be a general requirement that those duties *not be inconsistent with* their constitutional duties.

Form of General Laws

Article III, s. 6 of the State Constitution, provides:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: “Be it enacted by the Legislature of the State of Florida.”

The bill or bills reorganizing the Cabinet should set out the amended acts, sections, or subsections of law being amended in order to comply with the State Constitution.

Further, under the doctrine of the separation of powers, a bill or bills reorganizing the Cabinet should not delegate to the executive branch the power to determine fundamental policies. The Florida Supreme Court, in construing the separation of powers provision, has stated

. . . Under the fundamental document adopted and several times ratified by the citizens of this State, the legislature is not free to redelegate to an administrative body so much of its lawmaking power as it may deem expedient Flexibility by an administrative agency to administer a legislatively articulated policy is essential to meet the complexities of our modern society, but flexibility in administration of a legislative program is essentially different from reposing in an administrative body the power to establish fundamental policy.²³³

²³²*Whitaker v. Parsons*, 86 So. 247 at 251 (Fla. 1920).

²³³*Askew v. Cross Key Waterways*, 372 So.2d 913 at 924 (Fla. 1978).

The court further stated:

... When legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.²³⁴

This doctrine was reaffirmed in *Chiles v. Children A,B,C,D,E, and F*.²³⁵ In that case, a statute authorizing the Administration Commission to reduce state agency budgets to meet budget deficits, was held unconstitutional. The court stated:

... The legislature can delegate functions so long as there are sufficient guidelines to assure that the legislative intent is clearly established and can be directly followed in the event of a budget shortfall. Carefully crafted legislation establishing, among other things, the extent to which appropriations may be reduced, coupled with a recitation of reduction priorities and provisions for legislative oversight, might pass facial constitutional muster. What the legislature *cannot* do is delegate it policy-making responsibility [*emphasis in original*].²³⁶

General Statutory Considerations

The Legislature has considered a number of issues that should be considered during the process of governmental reorganization and has established a number of requirements in law regarding the structure of state government. Unlike the State Constitution, these requirements may be modified by the Legislature. The general organizational structure of state government is established in ch. 20, F.S. This chapter also establishes two methods for transferring functions, called Type I and Type II transfers. Reference to these methods permits an abbreviated bill because the general statute clarifies what powers and duties are transferred without having to specify all of the details in a bill.

Governmental Organization

Chapter 20, F.S., establishes the organizational structure of state government in Florida. Section 20.02(1), F.S., declares the state policy regarding the governmental organization:

The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the

²³⁴*Ibid* at 918-919.

²³⁵589 So.2d 260 (Fla. 1991).

²³⁶*Ibid* at 268.

government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

Section 20.02(2), F.S., notes the constitutional limitation on the number of departments and further provides:

... The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness as intended by s. 6, Art. IV, of the State Constitution.

Five standards regarding organization of the executive branch are established in s. 20.02, F.S., that should be considered in the reorganization process:

1. Structural reorganization is to be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs.
2. The responsibility within the executive branch of government for the implementation of programs and policies must be clearly fixed and ascertainable.
3. Departments must be organized along functional or program lines.
4. The management and coordination of state services must be improved and overlapping activities eliminated.
5. When a reorganization of state government abolishes positions, the individuals affected, when otherwise qualified, must be given priority consideration for any new positions created by reorganization or for other vacant positions in state government.

Section 20.04, F.S., establishes statutory requirements for the structure of state government. Under this section, the executive branch is structured as follows:

- (1) The department²³⁷ is the principal administrative unit of the executive branch. Each department must bear a title beginning with the words “State of Florida” and continuing with “Department of _____.”
- (2) For field operations, departments may establish district or area offices that combine division, bureau, section, and subsection functions.

Generally, all departments must adhere to the specific organizational structure and terminology established in ch. 20, F.S. Exceptions to this general organizational structure are authorized for specific departments in s. 20.04(3), F.S. The Department of Banking and Finance is the only department specifically affected by Cabinet reorganization that is excepted from the general organization requirements.²³⁸

Under the organization structure established in ch. 20, F.S., the principal unit of a department is the division which is headed by a division director. The principal unit of a division is the bureau, which is headed by a chief. The principal unit of the bureau is a section, which is headed by an administrator. If further subdivision is necessary, sections may be divided into subsections which are headed by supervisors.

A “head of a department” is the individual or board in charge of a department,²³⁹ which includes the Cabinet, a cabinet officer, or a secretary. A “secretary” is an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution.²⁴⁰ In other words, a cabinet officer who heads a department is not a secretary.

The appointment of a secretary appointed by the Governor to serve as the head of a department must be confirmed by the Senate.²⁴¹ Section 20.05(3), F.S.,

²³⁷Section 20.03(2), F.S., defines “department” to mean the principal administrative unit within the executive branch of state government.

²³⁸The Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation are the other departments that are specifically excepted from the general organizational structure. The Department of Children and Families has organizational units called “program offices” that are headed by assistant secretaries. The Department of Corrections has principal policy and program development units called “offices” that are headed by directors. The principal policy and program development unit of the Department of Transportation is called the “office” and each office is headed by a director.

²³⁹Section 20.03(4), F.S.

²⁴⁰Section 20.03(5), F.S.

²⁴¹Section 20.05(2), F.S.

however, provides that the Governor may assign the Lieutenant Governor, without Senate confirmation, the duty of serving as the head of any one department, the head of which is a secretary appointed by the Governor, notwithstanding any qualifications for appointment as secretary of the department.

Section 20.05, F.S., establishes the powers and duties of department heads. Generally, a department head must plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or its subdivisions. Specific requirements placed upon agency heads include:

- ▶ Annually compiling a comprehensive program budget reporting all program and fiscal matters related to the operation of the department.
- ▶ Reimbursing members of advisory bodies and commissions, and boards of trustees.
- ▶ Adopting rules.
- ▶ Employing an executive director if the agency head is a board.
- ▶ Accepting gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department.
- ▶ Making recommendations concerning more effective internal structuring of the department to the Legislature.

Section 20.04(7)(a), F.S., prohibits the head of a department from reallocating duties and functions specifically assigned by law to a specific departmental unit, *unless specifically authorized by law*. Functions or agencies assigned generally to a department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the department head.

Under s. 20.04(7)(b), F.S., a department head may recommend the establishment of additional divisions, bureaus, sections, and subsections of a department to promote efficient and effective operation of the department. Additional divisions or offices in the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation, may be established only by specific statutory enactment. New bureaus, sections, and subsections of departments may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.²⁴²

²⁴²Section 20.04(7)(c), F.S., requires the Department of Management Services and the Executive Office of the Governor to adopt and apply specific criteria for assessing the appropriateness of all reorganization requests from agencies. The criteria must be applied to future agency requests for reorganization and must be used to review the appropriateness of bureaus currently in existence. Any current bureau that does not meet the criteria for a bureau must be reorganized into a section or other appropriate unit.

Type I and Type II Transfers

Section 20.06, F.S., provides the method by which reorganization of the executive branch is to occur. The section provides for two methods of transfer:

Type I Transfer - In this type of transfer, an existing *agency or department* is *transferred intact* to another agency or department becoming a *unit* of the agency or department to which it transferred. For example, if the Agency for Health Care Administration were to be transferred to the Department of Health and the entire agency was made a division of that department, a Type I Transfer would be the appropriate method of transfer. When an agency or department is transferred intact to another agency or department, the transferred agency or department exercises its powers, duties, and functions subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made, unless otherwise provided by law.

Under a Type I Transfer, the transferred agency or department which becomes a unit of another agency or department, has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred to the agency or department to which it is transferred. When segregated funds are transferred, the transfer must be completed in such a fashion that the relations between the program and the revenue source as is provided by law is retained.

Additionally, under a Type I Transfer, the administrative rules of the agency or department that is transferred remain in effect until specifically changed under the procedures provided in ch. 120, F.S., the Administrative Procedure Act.

Type II Transfer - This type of transfer applies not only to agencies and departments that are transferred, but to the transfer of specific *programs, activities, functions, units or subunits* within an agency or department. Under a Type II transfer, an agency, a department, program, activity, function, identifiable unit or subunit is *merged* into another agency or department.

The merged agency, department, program, activity, function, unit or subunit retains all its statutory powers, duties, and functions under a Type II Transfer. Its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds are transferred to the agency with which it is merged, except those transferred elsewhere or abolished. The transfer of segregated funds must be made in such a manner that the relation between the program and revenue source that is provided by law is retained.

Unless otherwise provided by law, the head of the agency or department to which an existing agency, department, program, activity, function or unit is

transferred is authorized to establish units or subunits to which the agency or department is assigned. Further the head of the receiving agency may assign administrative authority for identifiable programs, activities, or functions, to the extent authorized by ch. 20, F.S.

Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed pursuant to ch. 120, F.S.

Other Considerations

While reorganization of the Cabinet presents the Legislature with the opportunity to make sweeping changes to state government, there are policy considerations and practical issues that affect reorganization. These issues generally affect the reorganization process, but some issues may affect particular departments and cabinet officers more than others.

Governance

The issue of how the executive power is concentrated is a fundamental issue for consideration by the Legislature. One of the chief criticisms of Florida's cabinet system has been that the dispersal of executive power does not permit the Governor to act as the chief executive over large parts of state government. Every legislative delegation to a collegial body, such as the Governor and Cabinet, results in a decrease of executive power in the Governor. While the dispersal of executive power may keep the Governor from becoming too strong, it could also be argued that when responsibility for a function is assigned to a collegial body, the level of accountability for the performance of those functions is diminished because no single officer is responsible. Further, it could be argued that dispersal of power results in less efficiency.

While it may be argued that the elimination of two cabinet positions and the merger of two cabinet positions was intended to increase the power of the Governor, it must be acknowledged that the Cabinet system still remains fundamental to the system of governance in Florida. There will still be an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer in the executive branch with constitutional duties. As a result, the executive power still will be dispersed. In fact, one additional constitutional provision, which relates to the Florida Department of Law Enforcement (FDLE), solidified the dispersal of the executive power. The FDLE was created by the Legislature as an agency headed by the Governor and Cabinet. This arrangement is now established in the State Constitution, effectively limiting the ability of the Legislature to designate another type of agency head for the department.

It should also be recognized that there are instances when it may be appropriate to disperse authority and responsibility. The Legislature has created boards, commissions, advisory councils, citizen support organizations, direct-support organizations, and other types of entities, in order to ensure that certain types of professional expertise are utilized and to improve the government decision making process. Some entities, such as commissions, are independent agencies with greater regulatory responsibility than others. Some, such as advisory councils, have far more limited roles. In the process of reorganizing state government in the wake of cabinet reform, the Legislature may wish to consider how the executive power is distributed, what types of authority and expertise are needed for a particular government program, and to direct or redirect that power as appropriate.

Extent of Change Desirable

Another issue that the Legislature may wish to consider is the necessity or desirability of change. Other than constitutionally-mandated changes, many of the programs and functions currently housed in departments may be well-suited to the departments they are in and change may be determined to be unnecessary. Wholesale change to state government agencies could be disruptive to state agencies and, in the short run, could negatively affect regulatory and service capabilities.

On the other hand, if significant changes are determined to be desirable, it might be argued that cabinet reorganization provides the perfect opportunity to substantially reorganize state government.

Technology

Transfer of programs and functions among departments may impact agency performance of duties, as well as have high one-time and recurring costs. Legislative consideration of technology issues during consideration of reorganization will ensure smoother transitions and more efficient functioning.

Timing

The constitutional amendment is not effective until January 7, 2003, except for the purpose of qualifying for elections. In testimony given at the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, the Comptroller recommended that changes in statutory duties be made effective *at the same time* the constitutional duties of the Comptroller and

Treasurer are merged into the new Chief Financial Officer.²⁴³ In testimony given at the same committee meeting, the Treasurer also recommended that consideration of executive branch reform should begin earlier, but that implementation of statutory changes should occur with the effective date of the constitutional amendment.²⁴⁴

In the process of adopting legislation that reflects the reorganization of the Cabinet, the Legislature must distinguish the constitutional duties and functions of cabinet officers from their statutory duties and functions. Any legislative attempt to transfer the Comptroller's responsibility to settle and approve accounts or to transfer the Treasurer's duty to keep and disburse funds prior to the effective date of Amendment No. 8 would be ineffective. In the case of statutory duties, however, the Legislature is authorized to transfer those duties at any time. As a practical matter, the Legislature may wish to make some statutory changes prior to that date in order to ensure a smooth transition.

The Effect of Amendment No. 8 on Specific Cabinet Officers

Chief Financial Officer

The constitutional amendment abolishes the present cabinet offices of Comptroller and Treasurer, merges their constitutional duties, and creates a new

²⁴³Comptroller Robert Milligan testified at the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, stating: "The question then is when should we do it? I think at this point in time, the legislative body needs to give to a task force or study group their intent, what the intent of the Legislature is in dealing with this statutory, regulatory responsibility, and give your intent to the task force with sufficient clarity so that they can develop a plan by the next session, for submission to the Legislature the next session, for approval. And once approved, it's in place, and whenever execution is appropriate, and I happen to think that execution is appropriate in near concert or in coordination with the execution of joining the Treasurer and the Comptroller, which means commencing in later 2002, so that they're both in place on January 7, 2003." Tape on file with Senate Committee on Governmental Oversight and Productivity, Room 525 Knott Building, Tallahassee, Florida.

²⁴⁴Insurance Commissioner and Treasurer Bill Nelson testified, as follows: "Given the scope and the complexity of our responsibilities, I think that it would not be wise to wait until the next elected Legislature, the 2001-2002 biennium, to start considering this executive branch reorganization. In other words, I think you ought to do it now and when I walked in I heard Bob (Milligan) saying the same thing. That's especially so in light of the high turnover that is anticipated in your ranks when the term limits set in. I commend you, Mr. Chairman, for starting now utilizing the legislative experience and expertise that so many of you have accumulated already on this panel. It'll give you plenty of time to implement the constitutional amendment. At the same time, I think that it would not also be wise to make any changes effective before the effective date of the constitutional amendment, which is January 7, 2003." Tape on file with Senate Committee on Governmental Oversight and Productivity, Room 525, Knott Building, Tallahassee, Florida.

cabinet position, that of the Chief Financial Officer (CFO). In 2003, the State Constitution will provide:

The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state and shall keep all state funds and securities.

As a result of the creation of the CFO through the merger of two cabinet offices, the Legislature must decide whether to: (1) merge the Department of Banking and Finance with the Department of Insurance or keep separate departments; (2) decide upon the type of department head or heads; and (3) determine whether the new CFO should have combined constitutional and statutory functions or only constitutional functions.²⁴⁵ At least four options have been identified for legislative consideration.

CHIEF FINANCIAL OFFICER OPTIONS	
Option Number	Description of Option
Option 1.A.	Merging the Department of Banking and Finance with the Department of Insurance and designating the Chief Financial Officer as the head of a merged department.
Option 1.B.	Merging the Department of Banking and Finance with the Department of Insurance and designating an officer or board <i>other than</i> the Chief Financial Officer as the agency head. Assigning no statutory duties to the Chief Financial Officer.
Option 2.A.	Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating an officer or board <i>other than</i> the Chief Financial Officer as the head of each department. Assigning no statutory duties to the Chief Financial Officer.
Option 2.B.	Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating the Chief Financial Officer as the head of one department. Designating another officer or board as agency head for the remaining department.

²⁴⁵While stated somewhat differently, the issues identified by Insurance Commissioner and Treasurer Bill Nelson in testimony before the Senate Committee on Governmental Oversight and Productivity on February 3, 1999, are much the same: “We have, Milligan and I, have identified these four key issues, and let me repeat them, and then let me answer them for you. Should reorganization be addressed in the current, 1999-2000 legislative biennium? That’s question one. Question two: Should the regulatory functions of banking, insurance, finance and securities be assigned to an appointed or elected official? Number three: Should Florida establish a consolidated department under an umbrella regulation of insurance, banking, finance, and securities? And the fourth question is, should the regulatory agency or agencies be placed under the Governor, the Governor and the Cabinet, or the Chief Financial Officer?” Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

Additionally, in each of these options, the Legislature may wish to separate regulatory duties. For example, one or more independent commissions could be created to conduct rate making or other hearings. Other functions, such as enforcement, could be housed in one or more departments.

Continue Separate Departments or Combine Departments - Both the Department of Banking and Finance²⁴⁶ and the Department of Insurance²⁴⁷ have been delegated significant statutory authority by the Legislature. One issue for legislative consideration is whether these regulatory functions should be combined into one department or whether they should remain separated. Currently, at least 13 states place regulatory responsibility for banking, securities, and insurance in a single department.²⁴⁸ Eight states have departments which regulate banking and securities.²⁴⁹ Three states regulate banking and insurance in the same department.²⁵⁰

A review of departments shows that if the DBF and DOI were merged, without changing the number of employees or amounts appropriated, there would be a number of existing departments that would have more employees and larger appropriations. Based upon the current number of employees and appropriations,

²⁴⁶Current law authorizes the Comptroller to serve as head of the Department of Banking and Finance, which regulates state-chartered banks, savings and loan associations, credit unions, foreign banks, and check cashing operations. The department also licenses and regulates mortgage brokers and mortgage lenders, consumer finance companies, retail installment sales finance companies (motor vehicle, home improvement, and retail sellers), consumer and commercial debt collection agencies, and for-profit cemeteries and funeral homes that sell pre-need goods and services. It also oversees the return to citizens of unclaimed money and deposits left in financial institutions. Another statutory function is licensure of securities dealers and protection from illegal actions by such licensees and their agents (stockbrokers) and investment advisors.

²⁴⁷The Treasurer has been designated as the Insurance Commissioner and State Fire Marshal. The Treasurer administers a department that licenses insurance companies and insurance agents and regulates a broad range of insurance activities including rate and forms approval, investigation and prosecution of unfair insurance trade practices, and rehabilitation and liquidation of insolvent insurers. The Legislature has further designated the Insurance Commissioner to be the State Fire Marshal, which includes arson investigation, regulation and licensing, product testing and inspection of fire suppression and protection equipment, explosives and fireworks, uniform fire code administration for public buildings, and professional training of emergency service personnel. Also, the Insurance Commissioner is responsible for administration of the state self-insurance program known as the State Risk Management Program.

²⁴⁸The following states place banking, insurance, and securities regulation under a single department: Alaska; Colorado; Hawaii; Iowa; Kentucky; Maine; Michigan; Minnesota; Oregon; Rhode Island; South Dakota; Vermont; and Virginia.

²⁴⁹States which place regulation of banking and securities in one department include: Connecticut; Idaho; Louisiana; Nebraska; New Mexico; Ohio; Washington; and Wisconsin.

²⁵⁰New Jersey, Nevada, and Massachusetts have departments with jurisdiction over banking and insurance.

a merged department would consist of 2,432 employees and have a total appropriation of \$180,461,794. This would place the department in the bottom half of departmental appropriations as 15 departments currently have higher appropriations. Ten departments would have more employees. The departments with larger numbers of employees or appropriations are listed below.

COMPARISON OF DEPARTMENT FTEs AND FUNDS		
Departments	FY 99-00 FTEs	FY 99-00 Funds
Merged DOI and DBF	2,432.00	\$180,461,794
Agency for Health Care Administration	1,991.00	\$7,827,612,186
Agriculture & Consumer Services	3,588.75	\$284,559,189
Children & Family Services	26,759.75	\$3,715,551,628
Community Affairs	441.00	\$754,997,206
Corrections	28,858.50	\$1,681,110,539
Education (including independent divisions)	885.00	\$14,317,049,589
Elder Affairs	347.00	\$239,632,724
Environmental Protection	3,593.75	\$1,518,690,648
Health	2,826.00	\$1,712,997,088
Highway Safety & Motor Vehicles	4,966.00	\$339,312,294
Juvenile Justice	5,539.50	\$677,016,516
Labor & Employment Security	6,689.00	\$2,661,799,525
Management Services	1,802.00	\$2,901,615,418
Revenue	5,503.50	\$3,202,173,992
Transportation	10,376.00	\$4,488,636,670

While a merged department would not be unusually large, one argument against consolidation is that the jurisdictions of the two departments are not comparable because the banking industry is heavily regulated by the federal government and the insurance industry is not. The difference between the type of regulation of banking and insurance could be a sufficient basis for the Legislature to maintain

separate departments, but ultimately the issue is more one of departmental organization. In other words, if the Legislature wants to create a merged department but is concerned that the industries are somewhat incompatible because one is more subject to federal regulation than the other, it could create a merged department which clearly segregates the industries by providing for a separate division for each industry. Further, the Legislature could create independent commissions within a merged department that have limited responsibilities for only a specific industry.

In testimony before the Senate Committee on Governmental Oversight and Productivity, neither the Comptroller nor the Treasurer appeared to think that the differences in type of regulation between insurance and banking should preclude regulation of these industries by one department. Both the Comptroller ²⁵¹ and the Treasurer ²⁵² testified in support of the merger of the statutory duties of these

²⁵¹In testimony given by Comptroller Robert Milligan at the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, the Comptroller stated: "The questions that I think come up in dealing with the statutory responsibilities are, really, what kind of regulatory organization should we have to have responsibility for banking, securities, and insurance, and a few of the other financial services? What form of leadership should we have in reference to that particular organization, and then when should we execute, when should we establish whatever it is we are going to do organizationally? The real question in terms of the organization is, I think, kind of spins around, should we have, as we have today, a separate banking and securities, or banking and finance operation, or a separate insurance? Or should they be combined in some way? I am reminded, and I think some of you I know saw, watched the Super Bowl, and perhaps watched some of the playoff games of the NFL, an advertisement that shows a major city, city block area, something like Wall Street, it looks like, and flashing through that series of images, they talk about annuities, they talk about insurance, they talk about mutual funds, they talk about securities, they talk about banking, and then when it ends, it says, 'Come to the Mountain . . . or the mountain will come to you,' And what that is saying is that if you want these financial services of banking, securities, insurance, come to this single mountain . . . and we'll take care of you. And that's basically what has happened in these industries. Each of what used to be basically silo operations are now selling each other's products. Insurance, you can bank; banking, you can get securities; securities, you can get insurance and banking. They're all selling each other's products. And so, we have this, 'Come to the Mountain,' and it is my view that we need to have, because of this requirement to rationalize between these various products and the regulation of these products, it is my view that we need to have a single policy maker that sits over, in an umbrella way, over all of these financial services. As opposed to having separate policy makers and trying to sort out the differences and challenges and rationalize policy, put it under a single policy maker. And so, that is perhaps one of my strongest thoughts on how we need to handle the statutory responsibility of regulating these financial services." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁵²Insurance Commissioner and Treasurer Bill Nelson stated: "Should we establish a consolidated department for umbrella regulation of all of these entities? And my comments would echo his comments. Like it or not, the traditional legal walls separating insurance, banking, securities, and other financial services are coming down. And remember at the outset, I said that I was going to draw on my experience in this position as well as my experience from the Banking and Urban Affairs Committee in Washington. The trend is inevitable. What is happening is, is that everybody is selling everybody else's products. And the merging of banks are creating giant financial supermarkets while governmental watchdogs, both federal and state, are scrambling to catch up. And the situation begs, Mr. Chairman and members of the committee, umbrella regulation that crosses the old boundary lines and keeps a close eye on all these dealings and their effect on one another and

two departments. The reasons stated in support of the merger were that there is a trend toward consolidation of the services and products offered by the various financial and insurance institutions, as well as the fact that a merger would provide the state with the opportunity to integrate some regulatory functions, such as investigations.²⁵³

Consolidation of the services and products that are offered by the various financial and insurance companies is evidenced by some regulatory changes on the state and national level. During the 1999 session, the Legislature enacted legislation authorizing insurance sales by financial institutions throughout the state.²⁵⁴ Chapter 99-388, Laws of Florida, which became effective on July 1, 1999, repealed the “anti-affiliation” provision in the Insurance Code which had prohibited licensed insurance agents from engaging in “insurance agency activities” through a financial institution except in the case of a bank located in a city with a population of less than 5,000. The activities included the negotiation or sale of insurance policies or the servicing of an insurance policy. For purposes of the prohibition, “financial institution” included “any bank, bank holding company, savings and loan association, . . . or any subsidiary, affiliate, or foundation of the foregoing.”

the impact on the consumer. But the states ought not wait for the Congress. We were wrestling with this when I was in the Congress eight to ten years ago. Federal lawmakers have been attempting to modernize the financial service regulations for more than twenty years. And based on that experience that I told you about, I am convinced that consumers are better protected by an elected regulator in the state capital rather than the distant bureaucrats in the nation’s capital. And there are many other reasons to consolidate the regulation of all these entities. This would include the possibility of combining our investigative, consumer services and other units into stronger, more efficient and responsive divisions. Consolidation would provide the opportunity to provide one-stop shopping for consumers and businesses alike, especially in our field offices around the state.” Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁵³The Florida Bankers Association, in a letter dated October 18, 1999, to Senate President Toni Jennings, however, was opposed to merging the functions of the two departments: “A narrowly-defined scope of regulation is consistent with the current regulatory schemes of financial institutions, securities and insurance. Insurance is almost exclusively the province of state regulation. The state regulator sets rates and is responsible for financial safety and soundness of insurance companies. On the other hand, state regulation of financial institutions and of securities is ancillary to federal regulation. Regulators such as the Federal Deposit Insurance Company, Federal Reserve Board, and the Securities Exchange Commission heavily regulate on a federal basis. State regulation, while important, is not primary. As a consequence, regulation of insurance at the state level is more complex, involves greater resources and larger staff. In a consolidated regulatory scheme, the Board felt that banking would get less attention and perhaps would find the fees that it pays for state regulation would be used to underwrite regulation of other industries. The Board did not reach a conclusion as to how insurance should be regulated; however, it did conclude that insurance regulation should be separate from that of bank regulation.” Letter on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁵⁴House Bill 897 by Representative Bill Sublette (identical to Committee Substitute for Committee Substitute for Senate Bill 2402 by Committee on Agriculture and Consumer Services, Committee on Banking and Insurance and Senator Rossin).

The effect of repealing the anti-affiliation law permits insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the town in which the financial institution is located. The law applies not just to banks, but other financial institutions such as savings and loans. National banks, however, remain subject to the limitation on sales of insurance products in towns with populations of 5,000 or more contained in the National Bank Act.²⁵⁵ State-chartered banks are not subject to this limitation because they are not subject to the federal act. Additionally, all transactions must be conducted by licensed insurance agents in conformity with the rules and regulations of the Department of Insurance.

The legislation also includes a set of consumer protection requirements for the sale of insurance products in connection with financial transactions. The law specifically:

- ▶ Prohibits the use of information provided by a customer seeking credit from being used to sell the same customer insurance unless the customer has given express written consent or has been given an opportunity to object to the use of such information;
- ▶ Prohibits the conditioning of the extension of credit on the requirement that a customer obtain insurance from the financial institution;
- ▶ Prohibits a financial institution from rejecting an insurance policy solely because it has been issued by a person not related to the financial institution when such insurance is required by a loan or credit extension;
- ▶ Requires a written notice if insurance is offered in connection with an extension of credit. The notice must make it clear that the choice of an insurance provider won't affect the credit decision;
- ▶ Requires clear and conspicuous disclosures regarding risk of loss and that the policy is not a deposit and is not insured by the FDIC;
- ▶ Requires the insurance and credit transactions to be completed through separate documents; and
- ▶ Prohibits, except in a narrow circumstance, a loan officer involved in a loan transaction from selling insurance in connection with the same loan, but permitting that officer to refer a loan customer to another insurance agent not involved in the loan transaction.

²⁵⁵ National banks' authority to sell insurance is derived from federal law (12 U.S.C. s. 92). This federal provision allows national banks to sell insurance, but only from places having a population of less than 5,000. Repeal of the Florida law did not exempt national banks from this geographic limitation. However, once a national bank has established an agency in a town of less than 5,000, it may operate as an insurance agency without further geographical constraint. For an excellent article on this topic, see "Bank Sales of Insurance, The New Reality in Florida" by J. Thomas Cardwell in the issue of *Florida Banking* (August 1999).

According to representatives of the Florida Bankers Association, most large banks, as well as some smaller banks in Florida, are contemplating the sale of insurance either by acting as an insurance agency or perhaps forming an insurance agency. Additionally, some banks are considering forming a joint venture with insurance agencies. This review process by banks may take some time because there are a variety of Insurance Code provisions and department rules which address the transaction of insurance by insurance agencies. Additionally, bank employees selling insurance would have to be licensed as agents by the department.

Representatives of the DOI state that they are in the process of reviewing rules which apply to this legislation²⁵⁶ and hope to complete any revisions to, or repeal of, such rules by the end of the year.

Further, the Gramm-Leach-Bliley Act of 1999 was recently enacted by Congress and signed into law by President Clinton. This federal act repealed the Glass-Steagall Act of 1933 that separated commercial and investment banking and eliminates federal restrictions against affiliations among banks and insurance companies (as well as securities firms) required by the Bank Holding Company Act of 1956. The act also overrides state laws that conflict with federal affiliations provisions.

Given the trend toward consolidation of the services and functions of these entities, a strong case exists for merging the regulatory functions of the DBF and DOI. The head of a single agency with the combined statutory jurisdiction of the current Comptroller and Treasurer would have a broader perspective and might be able to respond to or anticipate more effectively changes in these regulated industries. Large agencies with different jurisdictions have been merged in recent years.²⁵⁷ If the Legislature decides to merge the statutory functions of the two departments, careful planning for the transition of functions will be necessary so that regulatory duties and the provision of services will not be disrupted.

Type of Agency Head - Once the Legislature decides whether to merge or keep separate the regulatory functions of the DBF and DOI, it must next determine the type of department head or heads it should designate. Currently, 12 states have

²⁵⁶Chapter 4-223, F.A.C.

²⁵⁷The Department of Business Regulation and the Department of Professional Regulation were merged; the Department of Natural Resources and the Department of Environmental Regulation were also merged.

elected insurance commissioners²⁵⁸ and 38 have appointed insurance commissioners.²⁵⁹ Two states have rating commissions.²⁶⁰

In testimony before the Senate Committee on Governmental Oversight and Productivity, the Comptroller and Treasurer expressed a difference of opinion on whether the agency head of a merged department should be elected or appointed.²⁶¹ The Comptroller²⁶² supported an appointed agency head, but the Treasurer supported an elected agency head.²⁶³

As noted previously, the department heads authorized by the State Constitution are limited. In effect, the Legislature may choose an elected or appointed officer to head a department or it may select an elected or appointed board as the department head. Specifically, in 2003, a department may be headed by:

AUTHORIZED DEPARTMENT HEADS IN 2003			
Constitutional		Statutory	
Officer	Collegial Body	Officer	Collegial Body

²⁵⁸The 12 states with elected insurance commissioners are: California; Delaware; Florida; Georgia; Kansas; Louisiana; Mississippi; Montana; North Carolina; North Dakota; Oklahoma; and Washington.

²⁵⁹The 38 states with appointed insurance commissioners are: Alabama; Alaska; Arizona; Arkansas; Colorado; Connecticut; Hawaii; Idaho; Illinois; Indiana; Iowa; Kentucky; Maine; Maryland; Massachusetts; Michigan; Minnesota; Missouri; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; Ohio; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; West Virginia; Wisconsin; and Wyoming.

²⁶⁰The states of Louisiana and Virginia have rating commissions.

²⁶¹In his testimony before the Senate Committee on Governmental Oversight and Productivity on February 3, 1999, Insurance Commissioner and Treasurer Bill Nelson stated: "This is the question on should it be appointed or elected? This is the one question that Bob Milligan and I disagree on." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁶²In testimony given before the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, Comptroller Robert Milligan stated: "So, my personal view on whether it should be appointed or elected in terms of the policy maker, I believe it ought to be an appointed policy maker." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁶³Insurance Commissioner and Treasurer Bill Nelson testified at the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity that "... there is clearly one appropriate place for these consolidated regulatory responsibilities. And that is in the department headed by the new Chief Financial Officer. If those responsibilities are instead given to an appointed official, under either the Governor or the Governor and Cabinet, accountability to Florida's citizens will be largely lost." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

<ul style="list-style-type: none"> - Governor - Lt. Governor - Attorney General - Chief Financial Officer - Commissioner of Agriculture 	The Governor and Cabinet	Secretary appointed by the Governor	Board whose members are appointed by the Governor
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One basis of support for an appointed agency head is that more of the executive power is consolidated in the Governor.²⁶⁴ The State Constitution permits two types of appointees, both of which are gubernatorial appointees: (1) an officer; or (2) a board, both serving at the pleasure of the Governor. The standard department head is a secretary appointed by the Governor. An example of the rarer choice, a board, is the Department of Citrus, which is headed by the Citrus Commission.²⁶⁵ The Legislature could provide for a Commission on Insurance and a Commission on Banking to head separate departments or a hybrid of the two to head a merged department. The commissioners would be required to be gubernatorial appointees under Art. IV, s. 6 of the State Constitution. Either an officer or board would permit the establishment of qualifications for the agency head, as well as Senate confirmation of the appointees.

On the other hand, an appointed department head, whether an officer or a board, would effectively bifurcate the constitutional duties of the CFO from the current statutory duties of the DBF and DOI. The Legislature is not authorized to transfer any constitutional duties of the CFO to another officer or entity. As a result, the CFO would be the sole cabinet officer who would not be assigned a department with statutory duties related to his or her office.

Instead of an appointed officer or appointed board, the Legislature could establish the Governor and Cabinet, an elected board, as the agency head. Such a designation would disperse the executive power as well as accountability. Assigning the Governor and Cabinet as the agency head of a department, however, would not be unusual. Four departments are currently headed by the

²⁶⁴In testimony given before the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, Comptroller Robert Milligan stated: "I believe that the message in the results of amendment 8 was a signal also from the citizenry that we don't need more elected officials, we need less elected officials, and in fact, put more strength in the Governor in this State by allowing the Governor to have more impact in some areas." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁶⁵The Department of Citrus is headed by a board which is called *The Citrus Commission* under s. 601.04(1)(a), F.S. Legislative qualifications for board members are described and appointees are appointed by the Governor for terms of 3 years. Board members are also subject to confirmation by the Senate under s. 601.04(2)(a), F.S.

Governor and Cabinet.²⁶⁶ As is the case for an appointed officer or board, however, designating the Governor and Cabinet as department head would not permit the consolidation of the functions of the CFO within the department as those functions will be constitutional powers of the CFO alone.

In the alternative, the Legislature could provide for an elected, constitutional officer to head a department. A number of choices are available under the State Constitution. The Legislature could assign the Governor, the Lieutenant Governor, or a single cabinet officer as the agency head. While direct accountability would be provided by assigning the Governor as the agency head, the Governor has already been designated as the head of the Executive Office of the Governor.²⁶⁷ Further, given the extensive duties of the Governor, assigning another department to the Governor might be excessive. It would also be unusual to assign the Lieutenant Governor as an agency head, though a number of Lieutenant Governors have served as temporary, non-statutory agency heads.²⁶⁸ It could be argued that, given their respective level of duties, the Lieutenant Governor would have more flexibility than the Governor to head a department.

Finally, the Legislature could appoint a single cabinet officer as the agency head. The available choices under the amendment are, however, limited. Functions of one or both departments could be placed under the Commissioner of Agriculture or the Attorney General. It could be argued that placement of these functions under these officers might be inconsistent with their duties, though cabinet officers often have very diverse responsibilities. The most obvious choice for an elected agency head to administer a department would be the new CFO as that constitutional office will be created out of the officers who are currently delegated authority for the statutory functions.

A department headed by the Governor and Cabinet or a cabinet officer, however, would not permit the Legislature to establish qualifications for the head of the new department. If the Legislature decides to designate the CFO as the agency head, it will not be able to determine what qualifications the CFO must have as the only qualifications that can be placed on the office are constitutional.²⁶⁹ It

²⁶⁶The Governor and Cabinet sit as the agency head for the Florida Department of Law Enforcement, the Department of Veterans' Affairs, the Department of Highway Safety and Motor Vehicles, and the Department of Revenue.

²⁶⁷Section 14.201, F.S.

²⁶⁸Lt. Governor Buddy MacKay and Lt. Governor Wayne Mixson both served as temporary department heads.

²⁶⁹Article IV, s. 5 of the State Constitution only requires a cabinet member to be not less than thirty years of age and to have resided in the state for the preceding seven years. Only the Attorney General is required to meet professional qualifications related to his or her office.

should be noted, however, that establishment of qualifications for agency heads is not the norm.

One reason given in support of an elected officer is that an elected insurance regulator may have the ability to defend consumers more effectively than an appointee because, as the position is elected on a statewide basis, this type of regulator has higher authority and visibility than an appointee and is directly accountable to the people.²⁷⁰ Another reason stated in support of an elected official is that appointees tend to be former, as well as future, employees of the insurance industry.²⁷¹ An opposing view, however, is that election of a regulator

²⁷⁰As I spoke to you last year on the need for Cabinet reform, I also made it clear that it is my belief that Florida's insurance regulator should continue to be elected, not appointed. As Insurance Commissioner in these last four years, I have learned that the regulator of insurance rates, insurer solvency, and insurance sales practices, be both independent and strong. If the Insurance Commissioner is weak, or beholding to powerful or influential interests, the consumer doesn't stand a chance. Now, I want to give you two examples that we have grappled with in the last four years to make the point. The first is Prudential. Thousands of Floridians, most of them elderly, were cheated out of their life savings during the '80s and early '90s by a deceptive practice known as 'churning.' They were told that they were such good customers, the pitch was, 'We are going to put you in a higher value life insurance policy and it's not going to cost you a dime.' And only later, sometimes four and five years later, did they discover, that they started getting the bills for higher premiums, and when they inquired, they said, 'Yes, you got that.' And when they said, 'No I didn't, just give me my old policy back,' they found out that it had been raided of its cash value to pay for the new higher premiums on the higher value life insurance policy. A deception, a deceptive scheme, perpetrated over fifteen years by that one company, and there were others, of which they did everything in the world to get out of. If it had not been for the State of Florida, as the main holdout, finally getting combined with us California, Texas, and Massachusetts, holding off a national class action settlement, the consumers would have gotten very little. We conducted our own investigation here in Florida and the Attorney General was standing right by my side with a RICO action in his hip pocket ready to go and we won critical, necessary concessions for the consumers in order to get them to change the national class action settlement. That's one example, Mr. Chairman, that I don't think an appointed commissioner would have had the same kind of clout that the laws of Florida had enabled me to stand up for what was right. I want to give you another example. After suffering \$16 billion in insured losses from Hurricane Andrew back in '92, property casualty insurers continually pushed for higher and higher and steep increases. And on the average, homeowner's rates doubled in the immediate years in the aftermath of that '92 storm, and they would have increased far more but for our repeated slashings of the company rate filings in the course of this past term. Ultimately, we won a rate freeze, and now premiums are finally beginning to edge downward in homeowner's insurance. And after many head to head confrontations with the industry chiefs over this issue, I am absolutely convinced that we would have never been able to have achieved this turnaround if I had been an appointed insurance regulator, but rather an elected regulator with the people of Florida standing squarely behind me." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁷¹At the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, Insurance Commissioner and Treasurer Bill Nelson testified, as follows: "In 1996, *Money Magazine* took a close look at insurance regulation in the United States. And one of the ways that the insurance industry stacks the deck against consumers according to the magazine's four month investigation is through, you didn't expect me to say this, is through the revolving door between the industry and mostly appointed insurance commissioners. In all but eleven in the country, are appointed. Those eleven are primarily the southeastern states and for years the appointed commissioner in California, they amended the constitution to make that position an elected position. But, there is this revolving door as pointed out by the investigatory

might allow regulated industries undue influence over the elected regulator.²⁷² This point was acknowledged by the Treasurer, who has noted the potential impact of campaign contributions on an elected insurance regulator.²⁷³ Currently, Florida law prohibits insurers, affiliates or their officers, as well as political committees representing their interests, from making contributions in excess of \$100 for any election to or on behalf of the Treasurer or a candidate for that office.²⁷⁴ Violation of the section is a misdemeanor of the first degree. A similar restriction applies to campaign contributions for the Comptroller.²⁷⁵ If the Legislature determines that these concerns are valid, it may wish to consider additional restraints or regulations on campaign contributions to this position or to provide that the position should be appointed instead of elected.

One additional type of elected officer has been proposed as an alternative to the list of elected department heads provided in the State Constitution, i.e., a statewide elected official created by the Legislature. While there is no constitutional provision that would prohibit the Legislature from creating a

piece in *Money Magazine* between the industry and mostly the appointed state insurance commissioners. *Money* found that at least 19 of the current commissioners came from the ranks of insurance companies, insurance agencies, or brokerage firms, or law firms affiliated with the insurance industry. The Consumer Federation of America has estimated that well over a hundred former commissioners joined or rejoined the industry upon leaving their state post. And *Money* recommended slowing this revolving door in their investigative piece by, ‘making the insurance commissioner an elective office,’ as it is in Florida and those eleven other states. And so, the bottom line, in my view, that to be effective, fair, and to have balanced regulation of the insurance industry requires that the top regulator be elected by the people and accountable to them. And, this is especially so because the insurance industry, unlike banking and securities, and this is why I understand Bob Milligan and I have this difference of opinion, the insurance industry, unlike banking and securities, is unregulated at the federal level. The place to regulate insurance is at the state level. In banking, as a practical matter, the banks of Florida as a practical matter, are regulated by the controller of the currency in Washington since most of the banks are national banks.” Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁷²In testimony given before the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, Comptroller Robert Milligan stated: “The second element of leadership that really boils down is, should we have an elected policy maker or an appointed policy maker? I have had, over the past four years, held the position that anyone that regulates an industry should not be an elected official, primarily because I think there is some opportunity for abuse, excessive influence, in either direction. So, I have taken the position for the past, over four years now, that really we should not have elected officials regulating industries.” Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁷³In testimony at the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, Treasurer Bill Nelson stated that, “So the main concern, as articulated by Bob (Milligan), and it is a concern, is the possible susceptibility to influence by the regulated interests that contribute to the campaigns.” Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁷⁴Section 627.0623, F.S.

²⁷⁵Section 655.109, F.S.

statewide elected official, designation of this officer as a department head would conflict with the constitutional requirement that a department be headed by specific officers.²⁷⁶ The Legislature could recreate these functions in an alternative branch, much like the current Public Service Commission, but this would not be the norm. Further, given the traditionally executive nature of the functions delegated to these departments, such an arrangement could raise concerns under Art. II, s. 3 of the State Constitution, which requires that the powers of state government are divided into legislative, executive and judicial branches and that no person belonging to one branch may exercise any powers of the other unless expressly provided in the State Constitution.

Constitutional Duties Only or Constitutional and Statutory Duties - A CFO with only constitutional duties would likely consist of at least three divisions of the Department of Banking and Finance: (1) the Office of the Comptroller/Division of Administration; (2) the Division of Accounting and Auditing; and (3) the Division of Information Systems.²⁷⁷ Further, some investigators will need to be assigned to the office. In addition, transfers from the DOI would include the Division of Treasury, which receives and disburses more than \$38 billion annually in state collections.

A few policy concerns are raised by the existence of a CFO with no delegated statutory duties. The creation of a purely constitutional cabinet office with no delegated statutory duties would be inconsistent with the historical practice of consolidating functions and assigning cabinet officers additional statutory duties. The history of the State Constitution, as well as long-standing legislative policy, encourage the consolidation of functions.²⁷⁸ The State Constitution shows an intent to consolidate governmental functions by limiting the number of departments to which governmental functions can be assigned. Legislative policy shows a bias in favor of consolidation of functions in the executive branch “. . . to achieve maximum efficiency and effectiveness. . . .”²⁷⁹ Nevertheless, the

²⁷⁶Article IV, s. 6 of the State Constitution.

²⁷⁷The Committee Substitute for Senate Bill 2206 by the Committee on Governmental Oversight and Productivity and Senator Daniel Webster transferred four divisions to the Office of the Comptroller: (1) Division of Administration; (2) Division of Accounting and Auditing; (3) Division of Information Systems; and (4) the Division of Financial Investigations.

²⁷⁸While there has been some attempt to keep the functions assigned to a department related to the other functions in the department, given the variety of functions and the limit on the number of departments, this policy has not always been followed strictly. For example, the current Commissioner of Agriculture is responsible not only for agriculture regulations in the state, but for consumer services, which includes telemarketing and dance studio regulations, among others.

²⁷⁹Section 20.02(2), F.S.

Legislature could conclude that the constitutional duties of the Comptroller and Treasurer, as combined in the new CFO, are extensive enough to alleviate any concerns raised by the creation of a purely constitutional office.

The creation of an Executive Office of the Chief Financial Officer with only constitutional duties would also leave unresolved the placement of the statutory functions delegated to the Comptroller and Treasurer. Likewise, such a decision would decrease the available options for agency heads for the DBF, the DOI, or a new combined department by eliminating the option of the CFO.

While there are some concerns that may be raised by segregating constitutional and statutory duties, this was the option contained in the Committee Substitute for Senate Bill 2206 which passed the Florida Senate unanimously in 1999, but was not taken up by the House of Representatives.²⁸⁰ Further, this position was supported by the Comptroller in testimony he gave before the Senate Committee on Governmental Oversight and Productivity.²⁸¹ The Comptroller recommended that the statutory functions of the two departments should be merged and that the agency head should be a gubernatorial appointee or a set of trustees in the nature of the State Board of Administration.²⁸²

²⁸⁰The Committee Substitute for Senate Bill 2206 provided for an Office of the Comptroller consisting of four divisions from the current DBF. The DOI was recreated as a department with the combined jurisdictions of the DOI and the statutory duties of the DBF. The head of the new department was a gubernatorial appointee confirmed by the Senate.

²⁸¹In testimony given before the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity, Comptroller Robert Milligan stated: "I believe that the message in the results of amendment 8 was a signal also from the citizenry that we don't need more elected officials, we need less elected officials, and in fact, put more strength in the Governor in this State by allowing the Governor to have more impact in some areas. So, my personal view on whether it should be appointed or elected in terms of the policy maker, I believe it ought to be an appointed policy maker. That doesn't mean that you can't have underneath that umbrella appointed policy maker, distinct regulators, a banking regulator, a securities regulator, an insurance regulator, because you certainly can. In many respects, that's kind of the way we're set up in Banking and Finance. Art Simon is my day-in-day-out manager of the regulation of banking. Don Saxon is my day-in-day-out regulator of securities. I am the policy maker, but they are the ones that do the examinations, and coordinate, and deal with their institutions in a regulatory sense, and for that matter with the consumer on a day-in-day-out basis. And so I feel very strongly that we need to have an official appointed by either the Governor or perhaps in a manner similar to the State Board of Administration and have a set of trustees in a manner similar to the SBA." Tape on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

²⁸²The Florida Bankers Association appears to be in agreement with the Comptroller on this point. In a letter to the Senate President Toni Jennings dated October 18, 1999, the Florida Bankers Association recommended that regulation of financial institutions in Florida "... be administered by a professional regulator with specific statutorily defined qualifications. This regulator should be appointed by the governor with the consent of the senate. The regulator should have responsibility for financial institutions (banks, savings and loans, credit unions, finance companies) and securities." Letter on file with Committee on Governmental Oversight and Productivity, 525 Knott Building, Tallahassee, Florida.

Instead of segregating the constitutional duties of the CFO from the statutory duties of the current Comptroller and Treasurer, the Legislature could take another approach and complete the constitutional merger by combining the statutory duties of these offices, as well. This was the position of the Treasurer in testimony before the Senate Committee on Governmental Oversight and Productivity.²⁸³ Merger of the constitutional and statutory duties of the Comptroller and Treasurer into the new CFO resolves a number of questions. First, the head of the combined constitutional and statutory agency is easily determined. Second, if a decision is made to also merge the regulatory functions of the DBF and DOI, there is no need to determine which functions of what agency should be placed where. Third, if the Legislature determines that election of an insurance commissioner or banking head is preferable to an appointment, merger of constitutional and statutory duties permits an election. A merger of constitutional and statutory duties, however, eliminates the ability of the Legislature to set qualifications for the agency head as only the State Constitution can establish requirements for this officer. Once again, establishment of qualifications for department heads is not the norm.

Another option that is available to the Legislature is to transfer only some of the statutory duties that are currently assigned to the Comptroller and Treasurer to the new CFO. A variety of choices are available to the Legislature in this approach. For example, the Legislature could designate the new CFO as the head of the DBF or, in the alternative, as the head of the DOI. If the Legislature were to determine that an elected insurance regulator was important, but that an appointed financial regulator was preferred, the Legislature could ensure both options by designating the CFO as the head of the DOI and by providing for an officer or board to head the DBF. The reverse is also true. This option, however, would require the Legislature to sort through the various statutory functions of the two departments, or any others, to determine what should be placed under the new department.

Separation of Jurisdiction - In addition to the issues reviewed above, the Legislature could also separate some portion of the regulatory responsibilities currently assigned to the DBF and DOI. For example, the Legislature could separate policy-making, rate making, and rule adoption from licensing and enforcement. The Legislature could create one or more independent commissions with limited authority over specific industries, while leaving

²⁸³Insurance Commissioner and Treasurer Bill Nelson testified at the February 3, 1999, meeting of the Senate Committee on Governmental Oversight and Productivity that “. . . there is clearly one appropriate place for these consolidated regulatory responsibilities. And that is in the department headed by the new Chief Financial Officer. If those responsibilities are instead given to an appointed official, under either the Governor or the Governor and Cabinet, accountability to Florida’s citizens will be largely lost.” Tape on file with Committee on Governmental Oversight and Productivity.

licensing, enforcement, and other duties in a department. Alternatively, the Legislature could separate jurisdiction by type of insurance.

By way of comparison, two states, Louisiana and Virginia, have commissions that are assigned some or all regulatory responsibility for insurance, banking, securities, and other financial institutions. The Louisiana Insurance Rating Commission was created by the Louisiana Legislature as a seven member commission.²⁸⁴ Six of the members are appointed by the Governor of Louisiana and confirmed by the state senate. The seventh member of the commission is the Insurance Commissioner who is elected to the position. The Louisiana Insurance Commissioner serves as ex officio chairman of the commission. According to representatives of the commission, by practice, the commissioner does not vote except in the event of a tie vote on the commission.

The Louisiana Insurance Rating Commission has authority over only certain types of insurance in the state. The commission approves rates and adopts rules relating to fire, certain types of marine and transportation (inland marine), title insurance and casualty insurance risks. The commissioner has responsibility for forms in these areas. The commission also writes rules for workers compensation insurance and longshoremen and harbor workers compensation insurance. Health, accident, reinsurance, aircraft, casualty, and surety are not regulated by the commission. The Casualty and Surety Insurance Division of the Department of Insurance determines rates, territorial definitions and classification plans for all casualty insurance coverages. Title insurance rates are promulgated by title insurance rating bureaus and approved by the Casualty and Surety Insurance Division. The Louisiana Attorney General has the right to represent the interests of the people of the state.

Virginia has a body called the *State Corporation Commission* which is created in Article IX of the Virginia Constitution. The commission has responsibility for securities, insurance, and financial institutions, among other businesses. The commission consists of three members who are elected by the joint vote of the General Assembly for staggered six-year terms. One member must have the qualifications of a circuit court judge. Typically, according to a representative of the commission, all members are attorneys.

The commissioners, called judges, employ individuals called *commissioners* to head bureaus or divisions under the commission. For example, the employee who is placed by the commission at the head of the division which administers banking laws is called the *Commissioner of Financial Institutions*. The head of

²⁸⁴Part XXX, s. 1401, Louisiana Insurance Code.

the insurance division is the Commissioner of Insurance. These employees serve at the pleasure of the commission.

The Virginia commission approves rates, adopts rules and regulations, and has powers of a court of records. Hearing officers of the commission make recommended orders that are forwarded to the commission for final order. Appeals are directly to the Virginia Supreme Court.

Florida law currently permits the establishment of commissions and there are a number of existing commissions in state government. A commission, unless otherwise required by the State Constitution, is defined by s. 20.03(10), F.S., to mean

a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, *independently* of the head of the department or the Governor [*emphasis added*].

If the Legislature wished, it could create an *independent* commission or commissions and assign them to a merged department or in separate departments, for administrative purposes. The quasi-legislative and quasi-judicial powers could be extensive or they could be limited to particular jurisdictional areas, as is the case in Louisiana where the commission approves rates and adopts rules relating to fire, certain types of marine and transportation, title insurance and casualty insurance risks but not for health, accident, reinsurance, aircraft, casualty, and surety. For example, rate making for all types of insurance could be placed in a Florida insurance commission or only health and life insurance responsibilities could be placed under an insurance commission. Instead of separating responsibilities by the type of insurance, responsibilities could be separated functionally. Determinations of fiscal responsibility and soundness could be delegated to the commissioner, while rate making could be delegated to the commission. A separation of jurisdiction would require extensive research into the types of powers that must be delegated and the appropriate placement of those powers. Additionally, under this scenario, the status of the insurance commissioner or the banking commissioner to the particular commission must be resolved. For example, would the commissioner be a part of the commission or not? If the commissioner were to be made a part of a commission, what type of voting rights would he or she have?

In conclusion, a number of policy issues must be decided by the Legislature prior to determining how to restructure the DBF and the DOI. These policy issues affect whether the regulatory functions of the departments should be merged into a single department, what type of agency head or heads should be designated,

and whether the CFO should be assigned statutory duties in addition to constitutional duties.

Commissioner of Education, Department of Education and the State Board of Education

Under the amendment to the State Constitution, the Commissioner of Education will be removed from the Cabinet. Further, Art. IV, s. 4(g) of the State Constitution, which provides that the commissioner supervises the public education system in the manner prescribed by law, will also be deleted. Reference to a Commissioner of Education, however, will remain in the State Constitution. Under the new constitutional scheme, the Commissioner of Education will be appointed by the State Board of Education. The duties of the commissioner, however, are not specified.

The amendment to the State Constitution also modifies the composition of the State Board of Education. The current board consists of the Governor and Cabinet. Under the amendment, board members will be gubernatorial appointees who are confirmed by the Senate and serve staggered 4-year terms. Article IX, s. 2 of the State Constitution, will provide that the State Board of Education appoints the new Commissioner of Education. The board will have supervision of the free public education as is provided by law.

Amendment No. 8 provides the Legislature with the opportunity to review the current educational government structure and to consider whether the current model should be modified. Two options for legislative consideration have been identified to implement the provisions of Amendment No. 8 related to the educational governance system in Florida. The first option is to designate the newly-constituted State Board of Education as the head of the Department of Education (DOE) and to designate the Commissioner of Education as the executive director of the DOE. Under the second option, the jurisdiction of the State Board of Education could be limited to kindergarten through the twelfth grade (K-12). Limiting the jurisdiction of the State Board of Education to K-12 would be consistent with the current governance structure that assigns various boards responsibility for particular levels of education in the state. Option 2. would require the Legislature to designate a new agency head.

EDUCATION	
OPTION NUMBER	DESCRIPTION OF OPTION
Option 1.	Designate the State Board of Education as the head of the Department of Education and provide that the Commissioner of Education is the executive director of the department.

Option 2.	Designate the State Board of Education as the head of a division of K-12 only and provide that the Commissioner of Education is the executive director of the division.
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Additionally, three important issues may impact the legislative decision making process on educational governance. The first issue is whether the Legislature may modify the jurisdiction of the new State Board of Education. In 2003, the State Constitution will provide that jurisdiction of the board will be over the “. . . system of free public education as is provided by law.” The second issue which may affect the process is whether the Legislature is authorized to establish qualifications for members of the future State Board of Education and the future Commissioner of Education, as well as whether the Legislature may require Senate confirmation of board members and the commissioner.

Finally, the Legislature also may wish to concentrate more authority in a single board or officer so that responsibility for education is less dispersed. As noted previously, the current educational governance structure in Florida divides supervisory responsibility for education. Under this structure, the State Board of Education, the Commissioner of Education, district school boards, and various divisions within the DOE, including independent divisions that are headed by boards, each have responsibility for various aspects of education in the state. While the Commissioner of Education sits on many of the boards that govern various aspects of education in the state, the commissioner is not directly responsible for large portions of the educational structure.

For example, even though the Commissioner of Education is the head of the DOE, the Division of Community Colleges and the Division of Universities are headed by boards that are appointed by the Governor. These boards choose an executive director and the Chancellor. As a member of these boards, the Commissioner of Education has some oversight of the divisions, but he is not solely responsible for the divisions or the programs they operate. As a result, the Legislature may wish to consider whether the new head of the DOE should have more direct authority over these divisions and programs.

A variety of educational governance structures exist in the states. These governance structures may be established in state constitutions, by state legislatures, or both. A review of the governance structures of the ten largest states by population shows that a variety of systems exist. An educational governance system may assign responsibility for all education levels to a single entity or divide responsibility among numerous entities. Further, responsibility can be divided based upon type of duty, as opposed to educational level.

STATE	EDUCATIONAL GOVERNANCE SYSTEM			
California	K-12 is governed by the State Board of Education. <i>11 members on board who are appointed by the Governor & confirmed by Senate.</i>	Community Colleges are governed by a Board of Governors. <i>16 members appointed by governor.</i>	University system is split. The Ca. State University System (CSU) is governed by a Bd. of Trustees. <i>24 trustees - 5 ex officio members that are the Gov., Lt. Gov., Speaker, State Sup. of Pub. Instr. & the Chancellor.</i> Univ. of Ca. is governed by the Regents. <i>26 member board estab. in Ca. Const. 18 appointed by the Gov., 1 student appointed by Regents, 7 ex officio.</i>	Department of Education is responsible for executive and administrative functions related to education. The State Superintendent for Public Instruction is head of department and is elected. The superintendent is an ex officio member of the Bd. of Trustees, the Ca. State University Board of Trustees, and the Board of Regents.
New York	The Board of Regents is responsible for the general supervision of all educational activities within New York, presiding over the University of the State of New York (a broad term encompassing all institutions, both public and private, offering education in the state) and the New York State Education Department. <i>16 members elected by state legislature.</i> The chief executive officer of the department is the Commissioner of Education and president of the University, who is appointed by the Board of Regents. The department is responsible for general supervision of all educational institutions in the State, for operating certain educational and cultural institutions, and for certifying teachers and certifying or licensing practitioners of 38 professions.			

Texas	State Board of Education oversees K-12 public education system. <i>16 members, 15 elected + the Commissioner of Education.</i>	Community Colleges are governed by Institutional Governing Boards, which are multiple boards over 50 community colleges and one public technical college system.	Texas Higher Education Coordinating Board serves as the statutory coordinating agency for public postsecondary education in the state. <i>18 members appointed by the Governor with Senate confirmation.</i>	Texas Education Agency is headed by the Commissioner of Education. Also serves as executive secretary of the State Board of Education. The commissioner is appointed by the Governor.
Florida	State Board of Education is the chief policy-making and coordinating body for public education system, which includes K-16. <i>The State Board of Education consists of the Governor & elected Cabinet members, including the Commissioner of Education.</i>			
	Responsibility for K-12 in Florida is divided among 67 district school boards, the Commissioner of Education and the State Board of Education.	The Board of Community Colleges is the head of the Division of Community Colleges, a division of the Department of Education. <i>The board consists of the Commissioner of Education, one student, and 11 lay members appointed by the Governor, approved by 4 members of the State Board of Education and confirmed by the Senate.</i> The board appoints an executive director.	The Board of Regents (BOR) is the head of the Division of Universities, a division of the Department of Education. <i>The BOR consists of the Commissioner of Education and 13 citizens appointed by the Governor, approved by 3 members of the Cabinet, and confirmed by the Senate.</i> The BOR appoints the Chancellor.	The Department of Education is headed by the Commissioner of Education. The Department of Education is responsible for training and licensure of teachers. It has divisions of community colleges, public schools and community education, workforce development, human resource development, and support services.

Pennsylvania	<p>The State Board of Education is the regulatory and policy-making board for basic and higher education. Ten members comprise the Council of Basic Education with 10 members also on the Council of Higher Education. Also serves as the State Board for Vocational Education. <i>22 members, 17 appointed by the Governor and confirmed by the Senate; four members serve in the General Assembly as long as they hold the majority and minority chairs of the House and Senate Education Committees, and the chairperson of the Professional Standards and Practices Commission.</i></p> <p>The Department of Education assists the General Assembly, the Governor, the Secretary of Education and Pennsylvania educators in maintaining and supporting the education system. The department is headed by a Secretary of Education who is appointed by the Governor.</p>	
Illinois	<p>The State Board of Education in Illinois is the regulatory and policy-making board for preK-12. The main responsibility is distributing funds as there is much local control. <i>The board consists of 9 members appointed by the Governor for 6 year terms.</i> The Board of Higher Education is a coordinating agency for public and private postsecondary education and has jurisdiction over 9 public universities with 12 campuses; 39 community districts, with 48 colleges; 103 independent, not-for-profit institutions; and 20 independent proprietary institutions. <i>The higher education board has 15 members, 10 appointed by the Governor and confirmed by the Senate; 1 member representing public university governing boards, 1 representing independent college and university trustees, both appointed by the Governor; the chair of the Community College Board and the chair of the Student Assistance Commission; and a student.</i> The Board of Higher Education appoints its executive director. The Board of Community Colleges oversees community colleges and vocational/technical schools, though the Board of Higher Education still has authority over the community college board.</p>	
Ohio	<p>State Board of Education in Ohio regulates every K-12 school in the state, public & private. <i>21 members, 11 elected, 8 appointed, 2 ex officio.</i> Superintendent of Public Instruction, who is appointed by the State Board, is the head of the Department of Education.</p>	<p>The Board of Regents in Ohio has statutory authority for planning and coordination for private and public senior, community and technical institutions. <i>9 members appointed by the Governor with consent of Senate.</i></p> <p>The executive officer of the board, the chancellor, is appointed by the Board of Regents.</p>

Michigan	<p>State Board of Education has constitutional duties and general supervision over K-12 except as to institutions granting baccalaureate degrees. It has limited supervision over higher education, including general planning and coordination. It advises the Legislature of financial requirements of baccalaureate degree granting institutions. The Superintendent is appointed by the board. <i>The board consists of 8 elected members who serve 8 year terms. The Governor and Superintendent serve as ex officio members.</i></p>	<p>Each community college has its own board. <i>Board members are usually elected, though some are appointed.</i> The Community College Board is a constitutional advisory body to the State Board of Education. Functions as a committee of the State Board of Education. State Board has policymaking role, but community college program is going to Department of Career Development.</p>	<p>Three universities have an autonomous governing board. <i>The boards have 8 members who are elected statewide.</i></p> <p>The other public universities have appointed boards. <i>The Governor appoints the boards of these universities.</i></p> <p>The Higher Education Facilities Commission and Authority serves as statutory authority to provide for tax-exempt loans to independent nonprofit colleges for facilities acquisition, construction or remodeling.</p>
Georgia	<p>The State Board of Education is responsible for K-12. <i>11 members appointed by the Governor and confirmed by the Senate.</i></p>	<p>The Board of Regents is responsible for the operation of the University System of Georgia, which includes 2 regional universities, 13 state universities, 15 associate degree colleges. The Chancellor is elected by the Board and is the chief executive and administrative officer. <i>16 members, one from each congressional district, 5 additional members at large, all appointed for 7 years by the Governor, and confirmed by the Senate.</i></p>	<p>The Department of Education administers the policies of the State Board of Education. The department is primarily a service and support entity.</p>

New Jersey	Commissioner of Education is appointed by Governor. Responsible for K-12 and heads the Department of Education. The State Board of Education approves educational policies proposed by the Commissioner, confirms appointments, and decides appeals of commissioner's decisions. <i>Board consists of 13 members appointed by the Governor with Senate approval.</i>	Commission on Higher Education coordinates, plans, develops policy for community colleges and universities, public and private. Is not a regulatory entity. Each community college and university has its own governing board. <i>9 members on board, 6 appointed by the Governor with Senate approval; 1 recommended by Senate President, 1 by Speaker, 1 who is chair of NJ President's Council.</i>
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Option One - State Board of Education as Head of Department of Education

Article IV, s. 6 of the State Constitution, authorizes the Legislature to place a department under a board appointed by the Governor. Under the amendment, the newly-constituted State Board of Education (SBE) will consist of seven members appointed by the Governor and confirmed by the Senate. As a result, the SBE is a constitutionally authorized department head that could be designated by the Legislature as the head of the Department of Education.

On the other hand, it does not appear that the Commissioner of Education could be designated by the Legislature as head of the DOE. Article IV, s. 6 of the State Constitution, requires an officer or board who is appointed as an agency head to be a *gubernatorial* appointment. Under the amendment, the commissioner will not be appointed by the Governor, but will be appointed by the State Board of Education. Since the commissioner will be appointed by the board, it does not appear that the Legislature could designate the Commissioner of Education as the head of the DOE, though the commissioner could serve as the executive director.²⁸⁵

One issue which could affect the ability of the Legislature to designate the State Board of Education as a department head relates to the constitutional jurisdiction of the board. Currently, Article IX, s. 2 of the State Constitution, provides that the board has such supervision of the system of public education as is provided by law. In 2003, the State Constitution will provide that the board will have “. . . such supervision of the system of *free* public education as is provided by

²⁸⁵The Committee Substitute for Senate Bill 2208, which was passed by the Senate in the 1999 session, maintained the Commissioner of Education as the head of the Department of Education and provided that the Commissioner of Education was the chief educational officer of the state for *elementary* and *secondary* education. The authority of the commissioner was restricted in the bill by transferring some powers to the State Board of Education.

law [*emphasis added*].”²⁸⁶ No definition of *free* is contained in the amendment. Article IX, s. 1 of the State Constitution, however, distinguishes free public schools from institutions of higher learning²⁸⁷ and other public education programs, thereby indicating that the system of *free* public education is a narrower jurisdictional basis. Given this apparent limitation, the question arises whether the Legislature can assign additional responsibilities to the board. If not, the board may not be an acceptable choice as head of the DOE given the additional jurisdiction of the department.

The primary argument in favor of the position that the Legislature can assign additional jurisdiction to the State Board of Education is that the State Constitution still provides that the jurisdiction of the board is *as is provided by law*. This phrase provides the Legislature with much leeway in defining the duties of the board. Further, case law indicates that the Legislature is authorized to assign additional consistent duties to constitutionally created entities,²⁸⁸ a position which is consistent with the constitutional and legislative policies of distributing functions among a limited number of departments to promote efficiency. Further, records of the Constitutional Revision Commission indicate that the addition of the word *free* was a technical, not substantive amendment.²⁸⁹ As a result, the addition of the word *free* to Article IX, s. 2 of the State Constitution can be interpreted to authorize, but not to *require*, the Legislature to decrease the jurisdiction of the board.

While the State Board of Education is an authorized department head that could be assigned responsibility for secondary and postsecondary education, there are some issues that the Legislature may wish to consider prior to assigning the board responsibility for the entire system of public education. Under the amendment, members of the State Board of Education are appointed by the Governor and confirmed by the Senate. Given the specificity of the provision,

²⁸⁶Article IX, s. 2 of the State Constitution.

²⁸⁷*Institutions of higher learning* are defined by s. 228.041, F.S., to consist of all state-supported educational institutions offering work above the public school level, other than community colleges, that are authorized and established by law, together with all activities and services authorized by law to be administered by or through each of those institutions.

²⁸⁸*Whitaker v. Parsons*, 86 So. 247 at 251 (Fla. 1920).

²⁸⁹Page 93 of the transcript of the session at which the provision was modified states: “READING CLERK: Amendment to the amendment by the Committee on Style and Drafting, on Page 9, Line 1, after “of,” insert “free.” CHAIRMAN DOUGLAS: All right. Does everybody understand that, it is another technical amendment to the technical amendment. All in favor of the amendment to the amendment, say aye. Opposed? (Verbal vote taken). CHAIRMAN DOUGLASS: It carries. Now, we’ll vote on the amendment as amended. All in favor, say aye. All opposed? (Verbal vote taken). CHAIRMAN DOUGLASS: It carries.

coupled with the lack of the modifier *as is provided by law*, the ability of the Legislature to modify the appointment process, such as by requiring the Governor to choose from a list of nominees, appears limited. It should be noted, however, that the constitutional appointment process for the future State Board of Education is the same as the appointment process for the Citrus Commission, which heads the Department of Citrus, and the same as the appointment process for the Board of Regents and the Board of Community Colleges, which head divisions in the DOE.

There is one important distinction between the future State Board of Education and the Citrus Commission, the Board of Regents, and the Board of Community Colleges. Each of the latter entities are created by the Legislature and, as such, the Legislature is authorized to establish qualifications for their members. The State Board of Education is not created by the Legislature; rather, it is provided for in the State Constitution. Further, the members of the future board are likely constitutional officers. Case law does not definitively explain what language must be used to create a constitutional office, but legal commentary suggests that a constitutional office exists when the appointment or election thereto is provided for in the State Constitution.²⁹⁰ These factors may affect the ability of the Legislature to designate qualifications of members of the State Board of Education.

As noted previously, the Florida Supreme Court has held that where the State Constitution specifies qualifications for a constitutional office, the Legislature may not add or otherwise change these requirements, unless expressly or impliedly authorized to do so by the State Constitution.²⁹¹ Amendment No. 8 does not establish specific qualifications for the members of the State Board of Education. What is less clear from precedent is whether the Legislature may specify qualifications for a constitutional office when the Constitution is *silent* as to qualifications and fails to expressly or impliedly authorize the Legislature to specify qualifications.

In *Thomas v. State*,²⁹² the Florida Supreme Court observed that even though the Florida Constitution of 1885 did not prescribe any qualifications for the constitutional office of county superintendent of public instruction, qualifications were expressed for other constitutional offices and disqualifications were expressed for all offices. Thus, the Court ruled that these other constitutional qualifications and disqualifications were intended to be

²⁹⁰9 Fla. Jur. 2d 11.

²⁹¹*State v. Ex rel. Askew v. Thomas*, 293 So.2d 40 (Fla. 1974).

²⁹²58 So.2d 173 (Fla. 1952).

exclusive, and the Legislature was therefore not entitled to impose qualifications or disqualifications for the office of superintendent. The Court explained that it was clear the framers were of the view that the presence or absence of qualifications for a constitutional office was intentional, and the provision in the Constitution for duly qualified electors²⁹³ was a sufficient safeguard against the choice of unsuitable persons as constitutional officers.

The situation in *Thomas* can be distinguished from the future State Board of Education because the position in *Thomas* was an *elected* position. The court emphasized that the constitutional provision for duly qualified electors²⁹⁴ was a sufficient safeguard against the choice of unsuitable persons as constitutional officers and negated the need for legislatively established qualifications. As future members of the State Board of Education will not be elected but will be appointed by appointees, the rationale in *Thomas* appears inapplicable.

Further, more recently, in *State ex rel. Askew v. Thomas*,²⁹⁵ the Florida Supreme Court appeared to recede, but did not expressly do so, from its holding in *Thomas*. In *Askew*, the Constitution provided that district school board members were to be, “chosen by vote of the electors for appropriately staggered terms of four years, as provided by law.” Statute provided that district school board members must reside in the area where elected, and that a member vacate his office upon moving from the area. The Court found this statutory requirement valid. The Court stated that it read the constitutional provision, “as simply saying that school board members shall be ‘chosen. . . as provided by law.’” As such, the Constitution did not specify any qualifications but instead, it only addressed the manner of choosing such members, and thus, it was permissible for the Legislature to add qualifications.

The fundamental proposition of law which states that the Constitution is merely a limitation on the powers of the Legislature supports a holding that the Legislature is empowered to impose qualifications in the face of silence. In other words, if the Constitution does not prohibit the Legislature from doing a thing, either expressly or impliedly, the Legislature may act. Further, as the State Constitution establishes no qualifications for board members, but gives the Legislature great latitude in determining the educational governance structure and provides the Senate with confirmation authority, it might be argued that the State Constitution in this case gives the Legislature the *implied* authority to establish qualifications for board members.

²⁹³The provision for qualified electors is currently contained in Art. VI, s. 2 of the State Constitution.

²⁹⁴The provision for qualified electors is currently contained in Art. VI, s. 2 of the State Constitution.

²⁹⁵293 So.2d 40, 42 (Fla. 1974).

Nevertheless, given the historical precedent, it is unclear whether the Legislature may impose qualifications for constitutional offices when the Constitution is silent on the issue. The Court has not expressly receded from *Thomas* and it read the constitutional provision in *Askew* as stating that school board members were to be chosen *as is provided by law*. Even though the Court did not express that this language affected its ruling, it could be argued that the phrase gave the Legislature the express constitutional authority to impose qualifications. Further, it could be argued that the amendment gives the Governor the constitutional authority to appoint any person to the board with the only limitation on this choice being Senate approval.²⁹⁶ Given these points, where legislation imposes qualifications for a constitutional office when none are specified in the State Constitution and where the State Constitution fails to give express authority by the phrase *as is provided by law*, the validity of the legislation may be questioned.

If the Legislature designates the State Board of Education as the head of the DOE, it must then decide the duties of the future Commissioner of Education. Amendment No. 8 provides only that the future Commissioner of Education is appointed by the future State Board of Education and is silent regarding qualifications for the position. Like the future State Board of Education, the position of the future Commissioner of Education is affected by the issues of confirmation and establishment of qualifications. Both issues turn on the status of the commissioner as a constitutional or statutory officer.

Like the future State Board of Education, the future Commissioner of Education will not be created by the Legislature, but will be provided for in the State Constitution. As such, it could be argued that the future Commissioner of Education will hold a constitutional office.²⁹⁷ Under *Thomas*, if the position is a constitutional office, then the presence or absence of qualifications may be interpreted as intentional and the Legislature may be prohibited from establishing qualifications for the office.²⁹⁸ Nevertheless, like the State Board of Education, the future commissioner can be distinguished from *Thomas* as the position will not be *elected*, but appointed.²⁹⁹ Further, under *Askew*³⁰⁰ the Florida Supreme Court upheld a statutory residential requirement and staggered terms

²⁹⁶*Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

²⁹⁷9 Fla. Jur. 2d 11.

²⁹⁸58 So.2d 173 (Fla. 1952).

²⁹⁹The provision for qualified electors is currently contained in Art. VI, s. 2 of the State Constitution.

³⁰⁰293 So.2d 40, 42 (Fla. 1974).

for district school board members because the State Constitution only addressed the manner of choosing members and not their qualifications. This case can also be distinguished from the future commissioner, however, as the amendment does not contain the modified *as is provided by law*. Thus, as in the case of the members of the State Board of Education, if the commissioner is a constitutional officer, the ability of the Legislature to establish qualifications for the position could be questioned.

There are, however, some factors which militate against the future commissioner having constitutional status. First, the future Commissioner of Education will be an appointee of an appointed board. As a board appointee, the commissioner serves at the pleasure of the board. Further, it is likely that the commissioner would take direction from, and implement the policies of, the board. Additionally, the duties of both the appointed commissioner and the board that appoints the position, will be established by the Legislature. These duties do not have to rise to a level where the power of the state is being exercised independently by the commissioner. As a result, it might be argued that the future position of commissioner does not rise to the status of a constitutional officer. One case was located which supports this proposition, but the case can be distinguished from Amendment No. 8.

In *Austin v. State ex rel. Christian*,³⁰¹ the Florida Supreme Court stated that the office of assistant state attorneys is statutory, despite the fact that Art. V, s. 17 of the State Constitution, specifically provides for the appointment of assistant state attorneys by stating, “[s]tate attorneys shall appoint such assistant state attorneys as may be authorized by law.” The Court reasoned that the distinctions between state attorneys and assistant state attorneys warranted this holding. According to the Court, the Constitution provides that state attorneys are elected officials with certain experience requirements, whereas assistant state attorneys are appointed by the state attorney to serve at his pleasure, and have no constitutional experience requirements. As such, the office of the assistant state attorney was found to be merely a “creature of statute,” provided for in s. 27.324, F.S. As Amendment No. 8 also provides for an appointee, like the provision for assistant state attorneys, it could be argued that this provision provides only for appointment. Thus, the Commissioner of Education could be merely a creature of statute, not a constitutional officer.

Once again, it must be noted that, unlike the constitutional provision concerning assistant state attorneys, the provision in Amendment No. 8 regarding the appointment of the Commissioner of Education does not contain the phrase *as is provided by law*. Even though the Court in *Austin* did not refer to this language when holding that the office of assistant state attorney is statutory, this

³⁰¹310 So.2d 289, 294 (Fla. 1975).

distinction could be significant as it could be argued that this phrase indicated an intent not to create a constitutional office, as well as indicated an intent to provide the Legislature with authority to prescribe qualifications and the appointment process. Without this *as is provided by law* language for the Commissioner of Education, it could be argued that no such flexibility was intended by the drafters and that the commissioner is a constitutional officer.

If the position of future Commissioner of Education does not rise to the level of a constitutional office, issues still could arise relating to the establishment of qualifications and confirmation for the position depending upon whether it will be a statutory office or a mere employment. If the future commissioner will be a mere employee, then the confirmation provisions of Art. IV, s. 6(a) of the State Constitution would not apply. Confirmation may be authorized if the future position is a *designated statutory office* under Art. IV, s. 6 of the State Constitution.

As discussed *supra*, there is no case law defining the term *office* within the meaning of the phrase *any designated statutory office* contained in Art. IV, s. 6 of the State Constitution. The courts, however, have explained in other constitutional contexts that an *office*

... implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an *employment* does not comprehend a delegation of any part of the sovereign authority. The term *office* embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes, perhaps, the most decisive difference between an employment and an office. . . .³⁰²

Also, in *Robbin v. Brewer*,³⁰³ the Fourth District Court of Appeals, stated

[e]very 'office,' in the constitutional meaning of the term, imp[lies] an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws.

Using this principle, which has been referred to as the sovereign powers test,³⁰⁴ the Court has held that deputy sheriffs are officers for the purpose of the dual office holding prohibition in Art. II, s. 5 of the State Constitution because they exercise the same sovereign powers granted to the sheriffs who appoint them.

³⁰²*State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919). And see, *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

³⁰³236 So.2d 448, 451 (Fla. 4th DCA 1970).

³⁰⁴*Robbin v. Brewer*, 236 So.2d 448, 451 (Fla. 4th DCA 1970).

The duties of the future Commissioner of Education, however, are not yet clear. If the delegated duties are significant, including the current authority of the commissioner to waive statutes and rules, this may weigh in favor of a determination that the commissioner should be a statutory officer subject to confirmation. If, however, the duties of the future commissioner are limited and he or she only implements as directed by the future State Board of Education, then the position could be more one of employment.

In summary, the ability of the Legislature to establish qualifications for the State Board of Education or the Commissioner of Education is questionable. Further, the ability of the Legislature to confirm the Commissioner of Education is questionable. As a result, legislation which establishes qualifications or modifies the appointment processes established in the State Constitution for the members of the State Board of Education or the Commissioner of Education may be questioned.

Option 2 - Limited State Board of Education

Another alternative available to the Legislature is to limit the jurisdiction of the State Board of Education to K-12. Limiting the jurisdiction of the State Board of Education would require the Legislature to reconsider the current educational scheme. For example, if the State Board of Education were limited to K-12, a decision would have to be made regarding what entity would be the administrative and coordinating body for education in the state. Further, assuming the DOE were maintained and the jurisdiction of the State Board of Education were limited to K-12, the Legislature would be required to designate another agency head. Nevertheless, limiting the jurisdiction of the State Board of Education might resolve some of the concerns related to the establishment of qualifications and the appointment process discussed in the previous section because of the narrower jurisdiction of the board.

If the authority of the revised State Board of Education is limited to K-12, it could be compared organizationally, jurisdictionally, and functionally to the State Board of Community Colleges and the Board of Regents (BOR). Under this format, responsibility for each level of education in Florida would be assigned to a board which would appoint or employ the equivalent of an executive director. For example, the State Board of Community Colleges currently is comprised of the Commissioner of Education and 11 lay citizens who are appointed by the Governor, approved by four members of the State Board of Education and confirmed by the Senate.³⁰⁵ The State Board of Community Colleges is authorized by law to “. . . appoint, and may suspend or dismiss, an executive director of the community college system.”³⁰⁶ The executive director is not made subject to confirmation by the Senate. As well, the

³⁰⁵Section 240.307, F.S., provides that members must have been residents and citizens of Florida for at least 10 years prior to appointment. Additionally, members must be appointed in a manner providing equitable geographical representation.

³⁰⁶Section 240.311(4), F.S.

BOR is comprised of the Commissioner of Education and 13 citizens.³⁰⁷ Members of the BOR are appointed by the Governor, approved by three members of the Cabinet, and confirmed by the Senate. The BOR appoints a Chancellor to serve at its pleasure. The Chancellor must be qualified by training and experience to understand the problems and needs of the state in the field of postsecondary education.³⁰⁸ No requirement is made that the Chancellor be subject to Senate confirmation.

Under the revised State Constitution, the scheme for the State Board of Education is the same. Like the State Board of Community Colleges and the BOR, the State Board of Education will be appointed by the Governor and confirmed by the Senate. Also, like the executive director of the State Board of Community Colleges and the Chancellor, the State Board of Education will appoint the Commissioner of Education.

One concern that is raised by clearly segregating the jurisdictions of each board is that no entity would coordinate the policies of the various boards. It would be possible to resolve this problem by retaining the DOE as an administrative and coordinating body of the various educational boards. Retaining the department, however, will require the Legislature to designate an agency head. As indicated *supra*, the Commissioner of Education would not appear to be an authorized choice as this position will not be appointed by the Governor. As a result, the legislative options would be limited to the Governor, the Lieutenant Governor, the Governor and Cabinet, a cabinet officer, or an appointed officer or board.³⁰⁹

Under the list of constitutional options noted above, the Legislature could designate a board of gubernatorial appointees as agency head. The State Board of Education, the State Board of Community Colleges, and the BOR are all boards appointed by the Governor. It might be inconsistent to designate the State Board of Education as the head of the DOE if the Legislature were to limit the jurisdiction of the State Board of Education to kindergarten through twelfth grade. Likewise, given the limited jurisdiction of the other boards in the DOE, it would be inconsistent to name a particular board as agency head.

Instead of designating the State Board of Education or another existing board as the head of the DOE, the Legislature could create a board that consists of representatives from the various boards which currently head particular divisions of the department. For example, the Legislature could require the appointment of one member of the BOR, one member of the Division of Community Colleges, and one member of the newly-created State Board of Education to sit as the

³⁰⁷Pursuant to s. 240.207, F.S., members are selected from the state at large, representative of the geographical areas of the state; must have been residents and citizens for at least 10 years prior to their appointment (one of whom must be a full-time student in the State University System).

³⁰⁸Section 240.209, F.S.

³⁰⁹Article IV, s. 6 of the State Constitution.

appointed board,³¹⁰ and so forth. As noted previously, the members of each of these boards are already appointed by the Governor and confirmed by the Senate or will be. By designating board members of the various boards as the agency head, cooperation and coordination of educational policy could be encouraged.

In the alternative, the Legislature could designate the Lieutenant Governor as head of the DOE. This option would still provide a high level of gubernatorial responsibility and oversight for education.

Other Concerns

Under the governance structure of either Option 1 or Option 2, questions still may be raised regarding the level of authority assigned to the various boards. The level of authority that is delegated to a board has a direct effect upon the authority and accountability of the agency head. Where power is dispersed, accountability is decreased. The Legislature is authorized to concentrate more authority in the head of the DOE over the various educational levels. This could be accomplished by limiting those areas in which the boards are authorized to act. In the alternative, the boards could be substituted with advisory councils which would present policy options to the agency head.

Another issue affecting public education as a result of cabinet modification is associated with the authority of the state board and the commissioner once they become appointed rather than elected. The Legislature may wish to revisit the statutory authority delegated to the commissioner to adopt rules and standards that have the effect of law³¹¹ and to waive state laws and rules considered to be impeding school improvement.³¹² The powers and duties of the current State Board of Education and the Commissioner are established in the first two parts of ch. 229, F.S., and the state board and the commissioner are given responsibilities and authority for various aspects of public education in every chapter of the school code. These powers may need to be modified when the board and commissioner are no longer directly accountable to the people through election.

Custodian of State Records

Unlike the Comptroller and the Treasurer, whose offices merge, the cabinet office of the Secretary of State is eliminated by Amendment No. 8. The amendment provides that the term *custodian of state records* is to be substituted

³¹⁰If this option is chosen, it would be appropriate to remove the Commissioner of Education from the Board of Regents and the Division of Community Colleges.

³¹¹Section 229.515, F.S.

³¹²Section 229.592(6), F.S.

for the term *secretary of state* throughout the State Constitution and that the duties previously performed by the Secretary of State are to be provided by law.

The constitutional duties of the new custodian of state records are limited when compared with those of the current Secretary of State. The State Constitution does not make the custodian a member of the Cabinet. Further, not all of the constitutional recordkeeping duties of the former Secretary of State are continued. The revised State Constitution strikes current language providing that the secretary is to “. . . keep the records of the official acts of the legislative and executive departments.”³¹³ As a result of eliminating this language, many documents formally required to be filed with the Secretary of State will not be constitutionally required to be filed with the custodian of state records. The specific documents that will continue to be required by the State Constitution to be filed with the custodian include:

- ▶ Financial disclosure documents.³¹⁴
- ▶ Signed objections to a vetoed bill when the Legislature is not in session.³¹⁵
- ▶ Supreme Court orders on apportionment.³¹⁶
- ▶ Certificates of incapacity of the Governor.³¹⁷
- ▶ Executive orders suspending certain state officers not subject to impeachment.³¹⁸
- ▶ Executive orders of clemency.³¹⁹
- ▶ County ordinances.³²⁰
- ▶ Proposed constitutional revisions to the State Constitution.³²¹
- ▶ Recommendations of the Taxation and Budget Reform Commission.³²²

³¹³Article IV, s. 4(b) of the State Constitution.

³¹⁴Article II, s. 8 of the State Constitution.

³¹⁵Article III, s. 8(b) of the State Constitution; the custodian also must transmit these veto objections to the Legislature when it again convenes.

³¹⁶Article III, ss. 16(b) and (f) of the State Constitution.

³¹⁷Article IV, s. 3(b) of the State Constitution.

³¹⁸Article IV, s. 7 of the State Constitution.

³¹⁹Article IV, s. 8 of the State Constitution.

³²⁰Article VIII, s. 1(i) of the State Constitution.

³²¹Article XI, ss. 2(c), 3, 4(a) and (b), and (5) of the State Constitution.

³²²Article XI, s. 6 of the State Constitution.

Given the amendment, the place for filing the records of the official acts of the legislative and executive departments that are not specifically provided for in the State Constitution will need to be determined. Additionally, the numerous statutes that designate the location where records are kept could be reviewed to determine if they should continue to be filed with the custodian of state records.³²³ As part of this review process, the Legislature may wish to maintain all of the current constitutional and statutory filing duties of the Secretary of State in the new custodian of state records or to decrease those recordkeeping duties.

A determination of how extensive the recordkeeping duties of the new custodian of state records should be is integrally related to the future status of the Department of State (DOS). The Legislature must determine whether the department will be continued. If not, the Legislature will have to reassign the programs and functions currently assigned to the department to other entities. If the Legislature maintains the DOS, it must designate a new agency head, as well as determine which functions and programs will remain in the department. There are a number of issues that the Legislature must consider in making these decisions.

Given the limited constitutional duties of the new custodian of state records, two extreme options present themselves for legislative consideration. The Legislature could maintain the status quo by retaining the DOS and designating an agency head who is appointed by the Governor. This secretary could be designated as the custodian of state records. In the alternative, the Legislature could eliminate the DOS and disperse its duties among various agencies.

DEPARTMENT OF STATE	
OPTION NUMBER	DESCRIPTION OF OPTION
Option 1.	Maintain status quo. Designate the head of the Department of State as a secretary appointed by the Governor. In the alternative, designate the Lieutenant Governor as the department head.
Option 2.	Dismantle the Department of State and redistribute its programs to other units of state government.

³²³See ss. 15.01, 15.02, 15.07, 15.09, 15.15, 15.16, 17.27, 28.30, 98.081, 98.101, 98.461, 112.313(12)(b)3., 112.3145(4), 112.3148(6)(d), 112.3149, 117.01, 119.05, 119.09, 119.19, 120.53, 120.533, 120.54(1)(j), 120.66, 171.091, 240.2996, 257.04, 257.05, 257.35, 257.36, 257.37, 286.001, 440.107, 495.091, 506.07, 607.0201, 607.0403, 607.0501, 607.0502, 608.406, 608.407, 608.4082, 617.02011, 617.0203, 617.1007, 617.1008, 617.1503, 617.1530, 617.1601, 617.1622, 617.2006, 658.23, 679.401, 713.901, 865.10, 922.12, 922.15, and 941.23, F.S.

State Option 1 - Status Quo

The simplest transition available to the Legislature would be to maintain the Department of State in its current form and to designate a new agency head. Creation of an elected office of the Secretary of State would raise some constitutional issues. While the Legislature is not prohibited from doing so, the State Constitution does not authorize such an elected official to head a department. As in the case of all other departments, Art. IV, s. 6 of the State Constitution limits the Legislature to designating the Governor, the Lieutenant Governor, a cabinet officer, the Governor and Cabinet, or an officer or board appointed by the Governor as a department head. An appointed officer or board would enhance the Governor's power, as well as increase his or her accountability.

Another alternative department head that the Legislature may wish to consider is the Lieutenant Governor. Given the numerous areas of overlap between the DOS and the EOG, including cultural affairs and international trade, this designation might improve and enhance coordination of functions. Further, this designation would add some prestige to the appointed position which might be helpful in trade negotiations and cultural exchanges.

Retaining a Secretary of State in Florida has historical precedent. Florida has had a Secretary of State in some form since at least the 1838 charter. While an appointed Secretary of State would not be the equivalent of the Cabinet office, maintenance of the position would provide for continuity of some of the constitutional and statutory duties of that office. Additionally, the Office of the Secretary of State is a standard office in the vast majority of the 50 states and at the federal level. Of the 50 states, 47 have secretaries of state.³²⁴ The United States also has a Secretary of State.

Another issue that should be considered by the Legislature is the title that the head of the Department of State should be given. The current Secretary of State, as well as departmental staff, have testified in meetings of the Constitutional Transition Task Force that officials of foreign governments recognize the title *Secretary of State* and, as a result, it is easier for the DOS to establish cultural exchanges and foster a more favorable business climate. The Legislature may wish to retain this title as a result.

Further, if the DOS were retained, the constitutional and statutory recordkeeping duties of the current Secretary of State could be transferred to the new secretary by designating him or her as the custodian of state records. The Committee

³²⁴The states that do not have a secretary of state are Alaska, Hawaii, and Utah.

Substitute for Senate Bill 2142, which passed the Senate unanimously in the 1999 legislative session, was based upon this approach.³²⁵ This option appeared to be favored by the Secretary of State in testimony before the Senate Committee on Governmental Oversight and Productivity.³²⁶

In addition to the fact that most states and the federal government have secretaries of state, and that the title appears to be familiar internationally, it could also be argued that, based upon the location of certain functions within the office of the secretary of state in other states, certain duties are typically considered to fall within the functions of a secretary of state. For example, the secretary of state in most states is the chief elections officer of the state.³²⁷ Additionally, secretaries of state in most states also are responsible for business entity filings³²⁸ and commercial registrations.³²⁹

It might also be argued that one of the strongest reasons for leaving records custodian functions, historical and cultural resource responsibilities, notaries, commercial registrations, and others in the DOS is that there is a longstanding structure in place for the performance of these functions. No new positions, offices, or divisions would need to be created in, or transferred to, another

³²⁵The Committee Substitute for Senate Bill 2142 did not, however, specify the appointment process for the new department secretary. Nevertheless, as the head of the DOS was a “secretary,” by definition under s. 20.03(5), F.S., the department head would have been “. . . an individual who is appointed by the Governor to head a department. . . .” Further, under section 20.05(2), F.S., the appointment of a secretary by the Governor must be confirmed by the Senate.

³²⁶In testimony before the committee on January 20, 1999, Secretary of State Katherine Harris stated: “As you know, Amendment 8 was driven by voters’ desire to strengthen the office of the Governor and I believe this concept should be the cornerstone of your transition plan. All the experts tell us that transition plans must be shaped in a thoughtful fashion. During my tenure in the Senate, I certainly learned this over time. Positive changes are precipitated by deliberative planning. And I also learned that change arrived at in haste results in chaos, when you only look back at the HRS computer debacle, DER and DNR merger, or the State Lottery that we’re still explaining the shell game years later. When this transition is carefully planned it will achieve great things for Florida. My goal here is not to convince you to add more responsibilities, or save a program, or slice another, but to encourage this committee to act deliberatively, and not in haste. Currently, the Department of State operates like a well-run machine. Although we’re making improvements daily, I was fortunate enough to inherit a very efficient operation. Our divisions currently work together cross-functionally, sharing databases, computer staff, and technical support, as well as very vital information. As a result, through economies of scale, we’ve saved tax dollars and provided unmatched, excellent customer service. The department is a living example of interdepartmental government synergy. We must all be aware that a premature piecemealing of the department will raise costs and reduce services to your constituents.”

³²⁷In 36 states, the secretary of state is the chief election officer.

³²⁸In 41 states, business entity filings are under the jurisdiction of the secretary of state.

³²⁹In 40 states, commercial registrations are under the secretary of state.

governmental entity if the DOS were continued. Given the potential for dramatic structural changes to government in Florida in the wake of cabinet reorganization, departmental stability could be considered to be a high priority.

While the Committee Substitute for Senate Bill 2142³³⁰ retained the DOS, it did not keep the entire department intact. One significant modification to the DOS that was contained in the bill was the transfer of the Division of Licensing, minus the games promotions program, to the Department of Business and Professional Regulation (DBPR). Private investigators, repossession services, and security programs, are professional or occupational groups or businesses and, as a result, transfer of the Division of Licensing to the DBPR would fit within the mission of the department, which is

[t]o protect the public's health, safety, and welfare through the regulation of those professions or occupational groups and businesses prescribed in the Florida Statutes.

Additionally, the Committee Substitute for Senate Bill 2142 would have transferred the games promotions program to the Department of Agriculture and Consumer Services. Game promotions, i.e., sweepstakes, regulation is a consumer program that is compatible with programs currently housed in the Division of Consumer Services, Department of Agriculture and Consumer Services.

During the 1999 interim, however, staff of the DOS and the Constitutional Transition Task Force calculated that the one-time technological costs to the DOS associated with extracting this division from the department was \$3,208,277. Recurring costs were calculated at \$736,838.³³¹ Given these estimated costs for extracting the Division of Licensing from the DOS, the Legislature may wish to explore other alternatives to the transfer or to determine if the same result could be achieved by less costly means.

³³⁰The Committee Substitute for Senate Bill 2142 by the Committee on Governmental Oversight and Productivity and Senator Webster passed the Senate during the 1999 legislative session 40-0, but died in messages.

³³¹Costs to reconfigure and reinstall Windows NT on file and print server for new log in and domain name was calculated as a recurring cost of \$30,000 for data center rental. The network connection (a network hub is needed to segment users, connect to MAN), was estimated as a recurring cost of \$8,400; Internet connection and firewall, domain name services and Internet content server costs were calculated as recurring costs of \$18,000. One-time costs were calculated as follows: Electronic Mail server, software, and migration of existing E-mail files \$172,893; fax server software and dedicated telephone line \$371,429 for the network and \$25,000 for network training; new application server \$1,500,000 enterprise servers; applications migrated from enterprise server to new server \$995,000. Technical support and other staff (15 FTEs) were calculated at a one-time cost of \$143,955 and a recurring cost of \$680,438.

State Option 2 - Dismantling the Department of State

Given the elimination of the Secretary of State from the Cabinet, the decreased constitutional duties of the new custodian of state records, and the types of functions that are currently housed within the DOS, the Legislature could eliminate the DOS and transfer its functions to other departments or offices. As noted previously, the DOS consists of 7 divisions:

- (1) Office of the Secretary/Division of Administration.
- (2) Division of Library and Information Services.
- (3) Division of Elections.
- (4) Division of Historical Resources.
- (5) Division of Cultural Affairs.
- (6) Division of Corporations.
- (7) Division of Licensing.

Given the types of functions that are assigned to each division, the Legislature could reassign the functions of these divisions to other agencies with similar or overlapping jurisdictions.

Without a DOS, there would be no need for a Division of Administration. Any regulatory or other functions that are currently housed in the Office of the Secretary or the Division of Administration could be placed in the Executive Office of the Governor (EOG). For example, responsibilities related to trade, protocol, and some aspects of cultural affairs could also be placed within the EOG. The OTTED and the Office of the Secretary, through its Office of International Affairs, have responsibilities that encourage trade and other types of exchanges. These responsibilities could be coordinated in one office.

Under the revised State Constitution, however, there still must be a custodian of state records. This position, however, has only limited constitutional duties relating to the filing of specific records. At least two alternatives for placement of the position exist. The custodian of state records could be placed within the EOG. As the Secretary of State was, historically, the repository for all official acts of the executive branch, placement of the office within the EOG would be consistent. On the other hand, as the Secretary of State also was the custodian of official acts of the Legislature, the Legislature might want to create a separate depository for its official acts that are not among the enumerated constitutional filings. It should be pointed out, however, that these records traditionally have been maintained in the executive branch and the creation of another custodian would not be necessary.

In the alternative, the Legislature could designate the State Librarian as the custodian of state records. The State Library ultimately receives many of the

constitutional and statutory filings received by the Secretary of State; therefore limited structural change would be necessary.³³² Without a DOS, however, it would be necessary to determine where to place the Division of Library and Information Services, which includes the State Library. Under current law, the division director is the state librarian. It could be argued that the DOE is a logical place for the State Library. Responsibility for libraries, however, generally is not under the jurisdiction of the Secretary of State in most states. Only five secretaries of state are responsible for libraries.³³³ Responsibility for libraries typically is placed under a department of education, an education board, or the Governor.³³⁴

The functions of the Division of Elections include administering and enforcing state election laws; filing acts and papers of the Legislature and county ordinances; filing rules in the Florida Administrative Code; publishing and distributing the Florida Administrative Weekly for state agencies and overseeing the Florida Voter Registration Act. Further, the division is the repository for many state records. Given the diversity of the division's functions, it is unlikely that all functions could be transferred to a single entity. The functions of the division could, nevertheless, be dispersed.

For example, the responsibilities of the division relating to elections could be modified. In 1951, Florida became one of the first states to enact campaign

³³²It should be noted that filings are not automatically sent to the State Library as they often have viability for a number of years prior to being transferred. For example, financial disclosures are filed with the Division of Elections. Financial disclosures are microfilmed once a year, then sent to the records center for a ten-year retention. Objections to vetoed bills are filed with the Division of Elections, Bureau of Administrative Code. The vetoed messages are retained in the bureau for several years for administrative purposes, then sent to Archives for permanent legal and historical retention. Supreme Court reapportionment orders are initially filed with the Division of Elections to outline the districts for candidates to qualify for ballot purposes. Executive orders suspending officers are also filed with the Division of Elections and retained there for several years, then transferred to Archives for permanent legal historical retention. Clemency orders are retained in the Division of Elections, Bureau of Election Records and retained there, then sent to Archives. County ordinances are filed with the Division of Elections, Bureau of Administrative Code and retained for one year, then sent to Archives. The Constitutional Revision Commission meets every 20 years and files ballot proposals with the Secretary of State 180 days prior to the General Election. Once the elections are over, the election results from the 67 counties are bound in hard copy volumes and retained in the division for several years for administrative value, then sent to Archives for permanent legal historical retention. The Taxation and Budget Reform Committee meets every 20 years and files ballot proposals with the Secretary of State 180 days prior to the General Election. Once the elections are over, the election results from the 67 counties are bound in hard copy volumes and retained in the division for several years for administrative value, then sent to Archives for permanent legal historical retention.

³³³Delaware, Florida, Illinois, Missouri and Tennessee place libraries under the secretary of state.

³³⁴Thirty-two states place responsibility for libraries under departments of education, boards of education, or the Governor.

finance laws by adopting the “Who Gave It, Who Got It” law.³³⁵ The law underwent a major revision in 1973 when the Legislature created the Florida Elections Commission (FEC). The FEC was originally housed in the Department of State, Division of Elections and was dependent upon the division for all support and staffing. Authority to investigate complaints was vested with the Division, with reports brought to the FEC for action.³³⁶ This structure remained unchanged until 1977. At the time, the Legislature expanded the jurisdiction of the FEC to hear cases and impose civil fines.³³⁷ In 1997, the FEC was made autonomous and transferred from the DOS to the Department of Legal Affairs.³³⁸ This transfer established the FEC as a separate budget entity and provided that it was not subject to the control, supervision, or direction of the Department of Legal Affairs or the Attorney General. The FEC currently has authority over all aspects of its duties, personnel, purchasing, and budgetary matters.³³⁹ It should be noted that, even though the FEC remains the central election law enforcement agency, all administrative matters with respect to elections, such as filing of campaign treasurer reports, distribution of election forms and publications, and providing advisory opinions, remained with the Division of Elections. These matters could be transferred from the division to the FEC.

COMPARISON OF ELECTIONS RESPONSIBILITIES		
ENTITY	Commission on Elections	Division of Elections
CREATION	Section 106.24, F.S.	Section 20.10(2)(a), F.S.
MEMBERSHIP	The Commission is composed of nine members appointed by the Governor but chosen from lists provided by the Senate President, House Speaker, and minority leaders of each house. Members are confirmed by the Senate.	A division of the Department of State with a Division Director appointed by the Secretary of State.

³³⁵Chapter 26870-391, Laws of Florida.

³³⁶Chapter 73-128, Laws of Florida.

³³⁷Chapter 77-175, Laws of Florida.

³³⁸Chapter 97-13, Laws of Florida.

³³⁹Section 106.24, F.S.

COMPARISON OF ELECTIONS RESPONSIBILITIES		
ENTITY	Commission on Elections	Division of Elections
WHERE ASSIGNED	The commission is assigned to the Department of Legal Affairs, but it is an <i>independent</i> entity. The commission is not subject to control, supervision, or direction by the department or the Attorney General in the performance of its duties, hiring personnel, purchasing transactions, and budgetary matters.	The division is a unit of the Department of State.
DUTIES	<ul style="list-style-type: none"> - Conduct hearings. - Adopt rules for filing of a report when hearings are conducted by single commission or panel. - Contract or consult with state agencies for professional assistance as may be needed. - Investigate and determine violations of the Elections Code, ch. 104, F.S., and campaign financing laws under ch. 106, F.S., after receiving a sworn complaint or information from the Division of Elections. - Issue reports finding probable cause or no probable cause. - Hear cases or refer to the state attorney. - May not issue advisory opinions, and must adhere to statutory law and the advisory opinions of the division. - Assess civil penalties. - Bring civil actions for violations. 	<ul style="list-style-type: none"> - Prescribe forms. - Prepare and publish manuals for recommended uniform methods of bookkeeping and reporting. - Develop a filing, coding, and indexing system. - Preserve statements and information. - Prepare and publish reports and issue advisory opinions. - Perform regular and random audits. - Perform field investigations. - Report failures to file with the Elections Commission. - Adopt rules. - File annual report with the Legislature. - Conduct preliminary investigations into irregularities or fraud involving voter registration and report to state attorney.

Additionally, publication of the Florida Administrative Weekly and the Florida Administrative Code could be transferred to the Division of Administrative Hearings (DOAH), which conducts administrative hearings and issues orders.³⁴⁰ Placement of responsibility for the Florida Administrative Weekly and the Florida Administrative Code in that division might also facilitate greater computer access to these and other administrative publications.

³⁴⁰These functions are placed within the comparable agency in the State of Tennessee.

Further, some or all of the functions of the Division of Historical Resources and the Division of Cultural Affairs could be placed within the Department of Community Affairs (DCA), the Department of Environmental Protection (DEP), or the EOG. Only five states place historic preservation under a secretary of state.³⁴¹ Only two states place archaeological programs under a secretary of state.³⁴² Cultural affairs and arts are under the secretary of state in four states.³⁴³ The types of functions and regulatory responsibilities assigned to the DCA are quite diverse and affect the community in many ways.³⁴⁴ The Legislature could decide that historic preservation and cultural affairs are in fact community affairs and place these divisions in the DCA. Or, given that the DOS currently has some environmental review responsibilities under growth management laws, some functions could be placed within the DEP. As noted earlier, some programs within the Division of Cultural Affairs, however, could be reassigned to the EOG.

Functions of the Division of Corporations and the Division of Licensing could fit within the Department of Business and Professional Regulation (DBPR) and the Department of Agriculture and Consumer Services (DACS). The Committee Substitute for Senate Bill 2142 transferred the Division of Licensing, minus the games promotions program, to the DBPR. The games promotions program was transferred to the DACS. Slightly more than half of the states have some type of licensure connected with their secretary of state,³⁴⁵ though only Nebraska and Florida place licenses for investigators under the secretary of state. Currently, the Governor and the Secretary of State have interrelated duties regarding notaries.³⁴⁶ If the DOS were eliminated, these functions could be consolidated in the EOG.

³⁴¹Delaware, Florida, Michigan, Montana, and New Jersey place historic preservation under secretaries of state.

³⁴²Florida and Michigan place archaeological programs under the secretary of state.

³⁴³Delaware, Florida, Idaho and New Jersey.

³⁴⁴The Division of Community Planning has responsibilities related to state and local planning, development of regional impact, affordable housing, sustainable communities; the Division of Emergency Management; the Division of Coastal Management coordinates governmental activities related to the protection, preservation, and development of Florida's natural, cultural, and economic coastal resources; the Florida's Communities Trust has responsibilities related to Preservation 2000; the Division of Housing and Community Development has responsibilities related to the Community Services Block Grant Program, the Drug Control and System Improvement Program, Drug-Free Communities Program, Local Law Enforcement Block Grant Program, Low-Income Emergency Home Repair Program, Low-Income Home Energy Assistance, among others.

³⁴⁵Twenty-six states.

³⁴⁶Art. IV, s. 7 of the State Constitution, ch. 117, F.S., and ss. 113.01, 13.051, and 113.06, F.S.

In summary, the Legislature could choose an approach that modified very little of the current structure or responsibilities of the Department of State by continuing the department and designating a new department head, either a gubernatorial appointee or the Lieutenant Governor. In the alternative, it could dismantle the department and disperse its responsibilities to a number of agencies. Finally, the Legislature could maintain the department, but transfer some of its duties.

Agencies Headed by the Governor and Cabinet

Other entities also are affected by reorganization of the Cabinet. In most cases, little appears to need to be done statutorily to reflect these changes. The constitutional change to the Cabinet, however, also provides the Legislature with the opportunity to take a closer look at some of the agencies headed by the Governor and Cabinet. The Legislature may wish to review whether the current structure which designates the Governor and Cabinet as the head of certain departments should be maintained or if these agencies should be transferred to the Governor. The Legislature does not have this prerogative regarding the Florida Department of Law Enforcement any longer, but it still has this option for the Department of Veterans' Affairs, the Department of Highway Safety and Motor Vehicles, and the Department of Revenue. Additionally, the Legislature may wish to consider whether the executive directors of these departments should be treated consistently regarding their confirmation.

The Department of Law Enforcement - The Legislature created the Department of Law Enforcement in s. 20.201, F.S., and provided that the Governor and Cabinet sit as the head of the agency. The constitutional amendment affects the ability of the Legislature to determine who is the head of the agency by specifically designating the Governor and Cabinet as the head of the agency in the State Constitution. Under the amendment, the Governor sits as the chair, and the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the remainder of the board. Under current law,³⁴⁷ the Governor appoints the executive director of the department with the approval of three members of the Cabinet. As amended, however, Article IV, s. 4(a) of the State Constitution, will provide that in the event of a tie vote of the Governor and Cabinet, the side on which the Governor voted is deemed to prevail.

³⁴⁷Section 20.201, F.S.

Department of Veterans' Affairs - In s. 20.37, F.S., the Legislature appointed the Governor and Cabinet as the head of the Department of Veterans' Affairs. The section provides that the executive director is appointed by the Governor with the approval of three members of the Cabinet. The amendment, however, reduces the size of the Cabinet to a total of three. As amended, however, Article IV, s.4(a) of the State Constitution, will provide that in the event of a tie vote of the Governor and Cabinet, the side on which the Governor voted is deemed to prevail.

Department of Highway Safety and Motor Vehicles - Under current law, the Governor and Cabinet sit as the head of the Department of Highway Safety and Motor Vehicles.³⁴⁸ Unlike the Department of Veterans' Affairs and the Department of Revenue, there is no specific grant of authority to the agency head to appoint an executive director nor is there a requirement that the executive director be confirmed by the Senate. While there is general authority for a department headed by a board, including the Governor and Cabinet, to appoint a director under s. 290.05(1)(g), F.S., it may be appropriate for the Legislature to provide specific authority in s. 20.24, F.S., as well as to require Senate confirmation of the executive director.

Department of Revenue - Under s. 20.21, F.S., the Governor and Cabinet sit as the head of the Department of Revenue. This section does not specifically provide that the department may employ an executive director nor does it require Senate confirmation of that executive director. As noted above, s. 20.05(1)(g), F.S., permits an agency headed by a board to employ an executive director who serves at the pleasure of the board. This section, however, does not require Senate confirmation of that executive director. The Legislature may wish to amend the section to provide specific authority to appoint an executive director and to require Senate confirmation of that director.

Other Collegial Bodies

The Administration Commission - The Administration Commission, while located within the Executive Office of the Governor, is composed of the Governor and Cabinet. The Governor is chair of the commission. Section 14.202, F.S., provides that affirmative action by the commission requires approval of the Governor and at least three other members of the commission. As the constitutional amendment will result in a Cabinet with only three members, affirmative action will require unanimity under the statute. As amended, however, Article IV, s. 4 (a) of the State Constitution, will provide that in the

³⁴⁸Section 20.24, F.S.

event of a tie vote of the Governor and Cabinet, the side on which the Governor voted is deemed to prevail.

State Board of Administration - The State Board of Administration (SBA) currently consists of the Governor, the Comptroller and the Treasurer. Article IV, s. 4(e) of the State Constitution, was modified by the amendment to provide that the SBA will be comprised of the Governor, who sits as the chair, the new Chief Financial Officer, and the Attorney General. The newly-constituted SBA will succeed to all the power, control, and authority of the State Board of Administration, at least for the life of Article XII, s. 9 (c) of the State Constitution. Funds allocated under this provision will continue to be administered by the State Board of Administration. References to the Treasurer and Comptroller in s. 215.44, F.S., should be modified to reflect membership changes. Further, consideration should be given to the percentage of votes necessary for action. Under the amendment, when the Governor and Cabinet are the agency head, in the event of a tie, the side on which the Governor votes is deemed to prevail. The SBA, however, is not composed of the Governor and Cabinet, but the Governor and two members of the Cabinet. As a result, this provision is inapplicable.

The Board of Trustees of the Internal Improvement Trust Fund - The current board consists of the Governor and Cabinet. Under the amended State Constitution, the Governor and Cabinet will continue sitting as this board, though the numerical size of the Cabinet will be reduced. Members will include the Governor as chair, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture which will constitute the trustees of the internal improvement trust fund as provided by law. Statutory references to the Comptroller, Commissioner of Education, Secretary of State and Treasurer, such as s. 253.02, F.S., should be amended.

The Board of Trustees of the Land Acquisition Trust Fund - The current board consists of the Governor and Cabinet. Under the amended State Constitution, the Governor and Cabinet will continue sitting as this board, though the numerical size of the Cabinet will be reduced. Members will include the Governor as chair, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture which will constitute the trustees of the land acquisition trust fund as provided by law. Modifications to statutes reflecting cabinet officers, such as s. 253.02, F.S., should be amended.

Options

Constitutional Amendment No. 8 merges the offices of the Comptroller and Treasurer into a Chief Financial Officer (CFO). The options identified in the report relating to the reorganization of the departments affected by this change include:

Option 1.A. - Merging the Department of Banking and Finance with the Department of Insurance and designating the Chief Financial Officer as the head of the merged department.

Option 1.B. - Merging the Department of Banking and Finance with the Department of Insurance and designating an officer or board *other than* the Chief Financial Officer as the agency head. Assigning no statutory duties to the Chief Financial Officer.

Option 2.A. - Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating an officer or board *other than* the Chief Financial Officer as the head of each department. Assigning no statutory duties to the Chief Financial Officer.

Option 2.B. - Maintaining a separate Department of Banking and Finance and a separate Department of Insurance and designating the Chief Financial Officer as the head of only one department. Designating another officer or board as agency head for the remaining department.

In those instances when the CFO is not the head of the DBF, the DOI, or a merged department, the Legislature also must consider whether an elected officer or board or an appointed officer or board should be the head of a department. Finally, in any of the options above, the Legislature also could choose to bifurcate executive responsibilities by creating an independent commission or commissions to perform some statutory duties currently assigned to a department.

Further, Amendment No. 8 eliminates the Commissioner of Education from the cabinet and provides that the new Commissioner of Education will be appointed by the State Board of Education. The amendment modifies the composition of this board by making its members gubernatorial appointees. Identified options include:

Option 1. - Designating the State Board of Education the head of the Department of Education, delegating the board jurisdiction of secondary and postsecondary education, and providing the Commissioner of Education is the executive director of the department.

Option 2. - Limiting the State Board of Education to K-12 and designating the board as the head of a division within the Department of Education. Designating the Commissioner of Education as the executive director.

In either option presented above, the Legislature may wish to consider whether the current level of autonomy provided to statutory boards, such as the Board of Regents and the Board of Community Colleges, should be retained or if more authority should be directed toward the head of the Department of Education.

Finally, Constitutional Amendment No. 8 also eliminates the Secretary of State from the Cabinet and provides for an undefined custodian of state records. The report identifies two options for consideration:

Option 1. - Maintaining the Department of State and designating an appointed officer or board as the Secretary of State. In the alternative, designating the Lieutenant Governor as the secretary of the Department of State. Providing that the head of the Department of State is the custodian of state records.

Option 2. - Eliminating the Department of State and placing its functions in a number of agencies.

Within constitutional limitations, the Legislature has numerous options available to it for consideration. This report does not present every available option, but only presents a few of the available choices for legislative review.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)

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SunCom 277-5177

MEMBER OVERSIGHT

Senators Jack Latvala and Tom Rossin